

ENTERED IN CLERK'S OFFICE
11-19-93
DATE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

LINDA R. WEBBER,

Plaintiff,

vs.

Case No. 93-C-636-B

HOWARD R. MEFFORD, Special
Administrator of the Estate of
GLEN DALE GIBBS, Deceased, THE
CITY OF SAPULPA, OKLAHOMA, a
municipal corporation, and
TRACY GRIFFIN, individually and
in his official capacity as a
police officer for the City of
Sapulpa, Oklahoma,

Defendants.

FILED

NOV 16 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER

This matter comes on for consideration of Defendants City of Sapulpa and Tracy Griffin's First Motion for Summary Judgment (Docket #6) pursuant to Fed.R.Civ.P. 56. The Court has previously granted summary judgment in favor of these Defendants in Case No. 93-C-635-B in a companion case involving the same facts and legal principles. The Court will essentially adopt its previous ruling therein.

This is an action arising from a police pursuit of a criminal suspect. Plaintiff, Linda R. Webber ("Webber") alleges that officer Tracy Griffin ("Griffin"), of the Sapulpa Police Department, pursued an automobile driven by the criminal suspect, Glen Dale Gibbs ("Gibbs"), at a high rate of speed, causing Gibbs' vehicle to collide with a vehicle in which Plaintiff was a passenger. Plaintiff has filed this action pursuant to 42 U.S.C. §1983, alleging that Defendants Griffin and the City of Sapulpa violated

Plaintiff's civil rights.¹

The following facts are undisputed:

1) On the morning of Sunday, January 5, 1992, at about 9:30 a.m., the Sapulpa Police Department received notice that Glen Dale Gibbs, a black male, had escaped from a correctional institution, and was: 1) suspected of rape; 2) believed to be in possession of firearms and a butcher knife; and 3) subject to a warrant for arrest. The Sapulpa Police Department dispatcher broadcast this information and a description of the vehicle Gibbs was driving to Sapulpa police officers. (See Plaintiff's Complaint, Paragraph IV. See also Affidavit of Tracy Griffin, attached as Exhibit A to Defendant's motion, and attachments).

2) Sapulpa Police Officer Tracy Griffin heard the dispatcher's transmission concerning Gibbs. Griffin knew and could recognize Gibbs. While on patrol, Griffin observed a parked vehicle matching the dispatcher's description of Gibbs' car. The car was occupied by a person slumped over the steering wheel. (See Plaintiff's Complaint, Paragraph IV. See also Affidavit of Tracy Griffin).

3) After determining from a tag check that the car was registered to a James Gibbs, whom Griffin knew to be Gibbs' brother, Officer Griffin stopped to investigate. He observed the occupant of the car to be a black male, asleep at the wheel. He also saw a butcher knife in the rear floorboard of the car. Because both doors of the car were locked, Griffin tapped on the window of

¹ Plaintiff has also named Howard R. Mefford, the administrator of Gibbs' estate, as a Defendant. Mefford has not filed an answer.

the automobile. (See Plaintiff's Complaint, Paragraph IV. See also affidavit of Tracy Griffin).

4) The occupant of the parked car awakened, looked up and saw Officer Griffin, who recognized the occupant of the car as Glen Dale Gibbs. The occupant had a can of beer propped in his lap. There were several cans of beer on the floorboard of the front passenger side of the vehicle which appeared to be empty, plus a 12-pack container. Gibbs immediately started the car and drove away at a high rate of speed to evade the police officer. Based on the information transmitted by the dispatcher, his identification of Gibbs, and his observation of the knife in the car, Griffin perceived Gibbs to be a threat to the safety of the public. Griffin returned to his police cruiser and notified the police dispatcher that he was in pursuit of the Gibbs' vehicle. Griffin activated the overhead lights and siren on the police cruiser. (See Plaintiff's Complaint, Paragraph IV. See also affidavit of Tracy Griffin).

5) The pursuit proceeded down a rural road and onto Highway 66, northbound toward Tulsa. After the vehicles had traveled 2.6 miles at a rate of speed which exceeded the speed limit, the Gibbs vehicle veered to the left. The Gibbs vehicle drove across the southbound oncoming lanes of traffic and collided with the vehicle in which Plaintiff was a passenger in the southbound lane/shoulder area of highway 66. This collision occurred approximately thirty minutes after the police dispatcher broadcast the information concerning Gibbs and approximately three minutes after the pursuit began. (See Plaintiff's Complaint, Paragraph IV. See also Affidavit

of Tracy Griffin and attachments).

6) Both Gibbs and Griffin were traveling at approximately 85 miles per hour. The posted speed limit was 55 miles per hour. (Exhibit A to Plaintiff's brief in opposition to Defendants' motion for summary judgment).

The Standard of Fed.R.Civ.P. 56
Motion for Summary Judgment

Summary judgment pursuant to Fed.R.Civ.P. 56 is appropriate where "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986); Windon Third Oil & Gas v. FDIC, 805 F.2d 342 (10th Cir. 1986). In Celotex, 477 U.S. at 317 (1986), it is stated:

"The plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial."

To survive a motion for summary judgment, nonmovant "must establish that there is a genuine issue of material facts..." Nonmovant "must do more than simply show that there is some metaphysical doubt as to the material facts." Matsushita v. Zenith, 475 U.S. 574, 585 (1986). The evidence and inferences therefrom must be viewed in a light most favorable to the nonmoving party. Conaway v. Smith, 853 F.2d 789, 792 n. 4 (10th Cir. 1988). Unless the Defendants can demonstrate their entitlement beyond a reasonable doubt, summary judgment must be denied. Norton v. Liddel, 620 F.2d

1375, 1381 (10th Cir. 1980).

A recent Tenth Circuit Court of Appeals decision in Committee for the First Amendment v. Campbell, 962 F.2d 1517 (10th Cir. 1992), concerning summary judgment states:

"Summary judgment is appropriate if 'there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law.' . . . Factual disputes about immaterial matters are irrelevant to a summary judgment determination. . . We view the evidence in a light most favorable to the nonmovant; however, it is not enough that the nonmovant's evidence be 'merely colorable' or anything short of 'significantly probative.' . . .

"A movant is not required to provide evidence negating an opponent's claim. . . . Rather, the burden is on the nonmovant, who 'must present affirmative evidence in order to defeat a properly supported motion for summary judgment.' . . . After the nonmovant has had a full opportunity to conduct discovery, this burden falls on the nonmovant even though the evidence probably is in possession of the movant. (citations omitted). *Id.* at 1521."

Legal Analysis and Authorities

Plaintiff asserts the Defendants violated her civil rights in violation of §1983.² To establish §1983 liability, the Plaintiff

² 42 U.S.C. §1983 provides, in pertinent part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured
....

must prove the Defendants' actions were the result of deliberate or reckless intent to deprive the Plaintiff of his constitutional rights. Daniels v. Williams, 474 U.S. 327, 331 (1986) and Medina v. City and County of Denver, 960 F.2d 1493, 1496 (10th Cir. 1992). "[R]eckless intent is established if the actor was aware of a known or obvious risk that was so great that it was highly probable that serious harm would follow and he or she proceeded in conscious and unreasonable disregard of the consequences." Medina, 960 F.2d at 1496 (citing Archuleta v. McShan, 897 F.2d 495 (10th Cir. 1990)).

An act is reckless when it reflects a wanton or obdurate disregard or complete indifference to the risk, for example 'when the actor does not care whether the other person lives or dies, despite knowing there is a significant risk of death' or grievous bodily injury. Archie v. City of Racine, 847 F.2d 1211, 1219 (7th Cir. 1988(en banc), *cert. denied*, 489 U.S. 1065 (1989); Apodaca v. Roi Arriba County Sherriff's Dep't, 905 F.2d 1445, 1446-47 n. 3 (10th Cir. 1990)(reckless conduct in police pursuit cases must involve true indifference to risks created); Harris, 843 F.2d at 416; *see also* Temkin v. Frederick County Comm'rs, 945 F.2d 716, 720, 723 (4th Cir. 1991)(reckless conduct in police chase cases must "shock the conscience" to be actionable) *cert. denied*, ___ U.S. ___, 112 S.Ct. 1172, 117 L.Ed.2d 417 (1992).

Medina, 960 F.2d at 1496.

Plaintiff contends Officer Griffin's pursuit of Defendant Gibbs was reckless and showed an unreasonable disregard for the consequences of his actions. Plaintiff suggests Defendant Griffin knew Gibbs would flee and thus should not have "changed the status

quo"³ and should not have continued the pursuit "after it was apparent the direction the chase was heading." (Plaintiff's Brief in Opposition, p. 4). Plaintiff contends Gibbs was "asleep and ineffectual until woken by Griffin and forced to flee." Plaintiff further contends Griffin's actions were unreasonable and in disregard to a known risk -- that Gibbs would flee and injure someone.

The material facts are uncontroverted. Defendant Griffin discovered an individual sitting in a car which met the description of the car Defendant Gibbs was known to be driving. Griffin knocked on the window of the car and recognized the occupant as Gibbs, who sped away. Griffin immediately engaged in a brief high speed chase of Gibbs, who he knew had recently escaped from a correctional institution, was violent and possibly intoxicated.

The Court concludes as a matter of law that the undisputed actions of Officer Griffin do not reflect "a wanton or obdurate disregard or complete indifference to risk." Medina, 960 F.2d at 1496. In order to impose §1983 liability in police pursuit cases, the Plaintiff must establish an "unreasonable disregard of the consequences." Archuleta, 897 F.2d at 499. Although all high speed chases involve a risk of harm, not all such pursuits are unreasonable under the circumstances. In the instant case, the Court concludes that a reasonable jury could not find Officer

³ Plaintiff is apparently attempting to distinguish the instant case from DeShaney v. Winnebago County Social Services Department, 489 U.S. 189, 201 (1989), in which the Court concluded the state was not liable where it simply failed to intervene in the status quo.

Griffin's actions involved "reckless conduct" or "true indifference to the risks created." Furthermore, the actions of Officer Griffin do not "shock the conscience."

In summary, the Court concludes Plaintiff has failed to provide evidence establishing a violation of his civil rights by Officer Griffin and therefore Officer Griffin is entitled to summary judgment.

Plaintiff's Complaint also alleges that the City of Sapulpa is liable under §1983 for "failing to institute an adequate pursuit policy and/or by failing to train and supervise its officers properly." It is well established that "[w]hen there is no underlying constitutional violation by a county officer, there cannot be an action for failing to train or supervise the officer." Apodaca v. Rio Arriba County Sheriff's Dept., 905 F.2d 1445, 1447 (10th Cir. 1990) (quoting City of Los Angeles v. Heller, 475 U.S. 796, 799 (1986)).

As set forth above, Plaintiff has failed to establish an underlying constitutional violation by Officer Griffin, and therefore summary judgment in favor of the City of Tulsa is appropriate. Furthermore, Plaintiff has provided no evidence of the City's pursuit policy or the City's alleged failure to train and supervise its officers.

For all the above stated reasons, the First Motion for Summary Judgment of Defendants City of Sapulpa and Tracy Griffin (Docket #6) should be and is hereby GRANTED.

Plaintiff's Complaint also names Howard R. Mefford, Special

Administrator of the Estate of Glen Dale Gibbs, as a Defendant. Although this is an action for relief under 42 U.S.C. §1983, Plaintiff has made no allegation that Gibbs was acting "under color of state law" at the time of the accident and therefore Plaintiff's 42 U.S.C. §1983 claim as to Howard R. Mefford should be and is hereby DISMISSED with prejudice.

IT IS SO ORDERED THIS 15th DAY OF NOVEMBER, 1993.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

THRIFTY RENT-A-CAR SYSTEM, INC.

Plaintiff

v.

WILLIAM W. TIBBETTS, JR., an
individual; WILLIAM W.
TIBBETTS, III, an individual;
PAUL RITCHIE, an individual;
DEBBIE H. RITCHIE, an
individual; RICHARD A.
CAILLOUETTE, an individual; and
JAMES LISTON, an individual,

Defendants.

Case No. 93-C-473-B

FILED

NOV 16 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER

This matter comes on for consideration of Defendant Richard A. Caillouette's (Caillouette) Objection To Thrifty's Motion For Entry Of Default Judgment And Motion To Vacate Default Judgment (docket #12) filed September 21, 1993.

History of Case

From the record herein and the parties' pleadings it appears Plaintiff Thrifty Rent-A-Car System, Inc. (Thrifty) attempted service on the several defendants in various ways. Both Defendants Tibbetts were served personally by process servers in the State of California. Defendant Liston was served by service upon "Mrs. Liston" by Washoe County, Nevada, deputy sheriff J. Roy. Defendants Paul Ritchie, Debbie H. Ritchie and Richard A. Caillouette were served by certified mail, return receipt requested, at their California addresses.

Caillouette, an attorney, acknowledges by affidavit that he personally signed the return receipt request form and received an "Acknowledgment of Service" form (Acknowledgment), a summons and a copy of the Complaint filed by Thrifty in this case. The Acknowledgment is a form sometimes sent to unserved defendants pursuant to F.R.Civ.P., Rule 4(c)(2)(C)(ii) in an effort to encourage the defendant to, in effect, enter a voluntary notice of appearance recognizing and acknowledging service. Section (C) (i) and (ii) provide as follows:

"(C) A summons and complaint may be served upon a defendant

(i) pursuant to the law of the State in which the district court is held for the service of summons or other like process upon such defendant in an action brought in the courts of general jurisdiction of that State, or

(ii) by mailing a copy of the summons and of the complaint (by first-class mail, postage prepaid) to the person to be served, together with two copies of a notice and acknowledgment conforming substantially to form 18-A and a return envelope, postage prepaid, addressed to the sender. If no acknowledgment of service under this subdivision of this rule is received by the sender within 20 days after the date of mailing, service of such summons and complaint shall be made under subparagraph (A) or (B) of this paragraph in the manner prescribed by subdivision (d)(1) or (d)(3)."

Caillouette argues that the majority rule among the circuits is that if service is attempted under (ii) but the Acknowledgment is not returned the service is invalid notwithstanding that same service would have been valid state law, i.e. the (i) approach, had the (ii) method not been attempted. Caillouette cites particularly Mason v. Genisco Technology Corp., 960 F.2d 849, 851-53 (9th Cir.1992); Combs v. Nick Garin Trucking, 825 F.2d 437,

(D.C.Cir.1987); and Armco, Inc. v. Penrod-Stauffer Bldg. Systems, Inc., 733 F.2d 1087 (4th Cir.1984) in support of his argument.

In Mason the Court leaned heavily upon Combs, a case factually in alignment with the present matter as was Mason. The Mason court quoted Combs as follows:

"The unmistakable meaning of [Rule 4(c)(2)(C)(ii)] is that if a defendant does not return the notice of acknowledgment the plaintiff must make a second attempt to secure service on that defendant if he is to be further pursued in the litigation.

This reading is bolstered by two factors. First, Rule 4 itself specifies the sanction that may be imposed upon the defendant for failure to return an acknowledgment--payment of the "costs of personal service"--without any suggestion whatsoever that the failure might also result in entry of default or default judgment. Second, only this reading of subdivision (ii) is consistent with the text of the form that must be sent to defendants when federal mail service is undertaken. The form warns defendants that failure to return an acknowledgment may result in liability for the cost of alternative service, again without so much as a hint that such failure could expose the defendant to default or default judgment. Indeed, the form indicates plainly enough that the only course of conduct which might give rise to judgment by default is the failure to file an answer within twenty days *after returning the form*. (emphasis in original). Id. at 853.

Mason acknowledges a "minority rule" exists, as follows:

"Genisco urges us to adopt the minority rule that service is effective despite failure to return the acknowledgment form if the defendant received actual notice of the action. *See Kitchens v. Bryan County Nat'l Bank*, 825 F.2d 248, 255-56 (10th Cir.1987); *Morse v. Elmira Country Club*, 752 F.2d 35, 40 (2nd Cir.1984)."

Caillouette distinguishes Kitchens as not being directly in point, an argument with which the Court essentially agrees. However, the essence of Kitchens convinces the Court the Tenth Circuit Court of Appeals would, on appropriate occasion, readily

align itself with the so-called minority position.

In Kitchens an issue on appeal concerned the effects of service of process on the statute of limitations. The Complaint in that case was filed near the end of a one year statute of limitation period. The Bank Kitchens sued for malicious prosecution was served with process by certified mail, addressed to the head cashier, Nancy Miller. Both parties acknowledged that the return receipt, though bearing what appeared to be Nancy Miller's signature, was signed not by Nancy Miller, but by Billy Miller, the president of the Bank. Under the Oklahoma statute governing service of process then in effect, the return receipt could be signed only the addressee.

After concluding service of process was procedural and therefore unrelated to the substantive aspects of the statute of limitations and its tolling provisions, Hanna v. Plumer, 380 U.S. 460 (1965), the Kitchens Court held that:

"Thus in the instant case, if service of process was valid under federal rules of civil procedure, the cause may be deemed timely filed even if, as the Bank asserts, process was not valid under Oklahoma law.

Assuming, arguendo, that process was ineffective under Oklahoma law, still there was no requirement that service be made in accordance with Oklahoma law. The Federal Rules of Civil Procedure allow several methods of affording notice to defendants, only one of which is dictated by state law. We note that service of process in the instant case complied with the spirit, if not the letter of the Fed. R.Civ. P. Rule 4. There is no question that Billy Miller, the president of the Bank, was a proper person to be served pursuant to Rule 4(d)(3). And although it appears from the record that only a copy of the summons and complaint were mailed and the "notice and acknowledgment" and return envelope prescribed by Rule 4(c)(2)(C)(ii) were omitted, "the federal courts generally take a permissive attitude towards the

mechanism employed for service of process when defendant actually receives notice."

* * * * *

Moreover, in our view, and contrary to the Bank's contention, service of process was valid pursuant to Oklahoma law."

In Mason the Court found Combs and related authorities persuasive in several respects: First, that the majority rule was consistent with the language of the Rule 4(c)(2)(C) and the acknowledgment form; Second, that because the acknowledgment form does not state that failure to return the form may result in a default judgment, the majority rule avoids unfairly requiring the defendant to respond without notice of the need to do so; Third, that the rule avoids "entangling the courts in ad hoc determinations about whether and to what degree actual notice of a lawsuit was provided.", citing Media Duplication Services, 928 F.2d at 1235; and finally, that the rule imposed no significant burden on the plaintiff Mason.

The Court concludes these criteria are not persuasive in the instant matter for several reasons:

(1) Notwithstanding the acknowledgment form does not state that failure to return the form may result in a default judgment, the summons served upon Caillouette clearly made such point:

"YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court and serve upon [name and address of Plaintiff's attorney] an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint."

(2) The Return Of Service form on the reverse side of the Acknowledgment is the same as the Return Of Service form on the reverse side of the Summons. The procedural failing herein, although not of great substance in the Court's view, is that Plaintiff's counsel filed the Return Of Service form on the back of the Acknowledgment rather than the Return Of Service form on the back of the summons.

(3) There is absolutely no question that Caillouette, an attorney, personally signed the return receipt requested form and received personally the Complaint, Summons and Acknowledgment. Further, it is beyond question that Caillouette conferred with other counsel regarding such putative service.

Lastly, in the Court's opinion, there is nothing in Rule 4 that prevents a plaintiff from pursuing, simultaneously, service under (c)(2)(C)(i) and (ii) in a belt and suspenders approach. If the defendant personally signs the return receipt form, service is validly established under state law and more than satisfies the due process/ actual notice concept of justice. If the defendant's wife, employee, child or other person signs the return receipt form (often the case, thereby throwing into question proper service), then the possibility still exists the defendant will utilize the Acknowledgment form.¹

If neither of the above happens, the plaintiff might then resort to the actual personal service method perhaps by an officer or process

¹ The Court would note that under such a dual service approach, a defendant who returns the Acknowledgment should not be later liable for the costs of the return receipt request effort.

server.

Based upon the foregoing, the Court concludes service of process was valid under Rule 4(c)(2)(C)(i) and fully complies with due process/actual notice concepts prevalent in this circuit. Kitchens, *supra*.

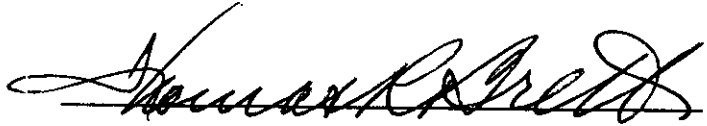
The Court next considers Caillouette's Motion To Vacate Judgment pursuant to Rule 60(b). Sections of this rule provide a Court may relieve a party from a final judgment for (1) mistake, inadvertence, surprise, or excusable neglect, or (6) any reason justifying relief from the operation of the judgment.

Caillouette received service on May 21, 1993, with no immediate filing in response thereto. On July 15, 1993, Default against Caillouette was entered by the Clerk at Thrifty's request and Thrifty alleges it sent Caillouette a copy thereof (Caillouette does not deny this allegation). On August 10, 1993, Thrifty filed a Motion For Default Judgment and the Certificate of Service indicates Caillouette was mailed a copy at the same address where previously served. No response was forthcoming from Caillouette and in his current motion Caillouette has made no allegation he failed to receive such motion. On September 9, 1993, a hearing on damages was set by minute order and parties were phoned. The hearing was held as scheduled on September 14, 1993. No appearance was made by Caillouette or on his behalf. On September 14, 1993, the Court entered Judgment against Caillouette. On September 21, 1993, the instant motion was filed by Caillouette.

The Court concludes Caillouette considered decision to take no

action was neither mistake, inadvertence, surprise, or excusable neglect, nor a reason justifying relief from the operation of the judgment. Caillouette's Motion To Vacate the Judgment entered against him, pursuant to Rule 60(b) is DENIED.

IT IS SO ORDERED, this 15th day of November, 1993.

A handwritten signature in black ink, appearing to read "Thomas R. Brett", written over a horizontal line.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

STEPHEN STERLING THOMAS,

Plaintiff,

VS.

RON CHAMPION, et al,

Defendants.

No. 93-C-589-B

FILED

NOV 17 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER

Before the Court is Defendants' motion to dismiss or in the alternative for summary judgment filed on September 16, 1993. Plaintiff has not responded.

Plaintiff's failure to respond to Defendants' motion constitutes a waiver of objection to the motion, and a confession of the matters raised by the motion. See Local Rule 15(A).

ACCORDINGLY, IT IS HEREBY ORDERED that:

(1) Defendants' motion to dismiss or in the alternative for summary judgment [docket #4] is **granted** and the above captioned case is **dismissed without prejudice** at this time.

SO ORDERED THIS 17 day of Nov., 1993.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

NOV 19 1993

DATE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

STRUTHERS INDUSTRIES, INC., a)
)
Plaintiff)
)
v.)
)
ATLANTIC CAPITAL CORPORATION OF)
CENTRAL FLORIDA, INC.; PULLMAN)
PUBLICATIONS, INC.; STEPHEN)
DECESARE; HOWARD JENKINS; and)
MARK J. MISSLER,)
)
Defendants.)

Case No. 93-C-641-B ✓

FILED
NOV 18 1993
Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

O R D E R

This matter comes on for consideration of Defendants', Atlantic Capital Corporation of Central Florida, Inc. (Atlantic), Pullman Publications, Inc. (Pullman), Stephen DeCesare (DeCesare), Howard Jenkins (Jenkins) and Mark J. Missler (Missler), Motion To Dismiss and/or Transfer For Improper Venue (docket #2).

In its Complaint Plaintiff Struthers Industries, Inc. (Struthers) alleges it is a Delaware corporation with its principal place of business being in Tulsa, Oklahoma; that Defendants Atlantic and Pullman are foreign corporations "with their principal places of business, for purposes of diversity jurisdiction, in the state of Florida"; that Defendants DeCesare, Jenkins and Missler are individuals residing in the state of Florida.

Struthers alleges that during early 1992, it was considering marketing proposals to increase sales of its common stock to new investors/shareholders and that it was contacted by Defendants who

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represented themselves as having the market knowledge, client base and financial strength to assist Struthers in marketing the Company and its stock. As a result thereof Struthers entered into an "Investor Relations Contract" contract with Pullman and a "Client Service Agreement" with Atlantic, both being executed on July 1, 1992. The "Investor Relations Contract" contemplated that Pullman would conduct a \$420,000.00 "complete INVESTORS EDGE program" including preparation and mailing of special investment brochures and establishment of an 800 number for prospective investors to call for additional information about the Struthers company. Defendants DeCesare, Jenkins and Missler are officers and shareholders of Atlantic and Pullman and allegedly negotiated the contracts with Struthers.

Struthers furthers alleges Atlantic offered to buy 120,000 shares of Struthers' stock for \$420,000.00 to fund the costs of the program to be commenced by Defendants; that Struthers delivered 120,000 shares to Atlantic who advised it had wired \$420,000.00 directly to Pullman in payment of Struthers' obligation.

Struthers, in its first cause of action, for breach of contract, alleges Defendants "dumped" the 120,000 shares on the AMEX while Struthers' stock was trading at \$3.75 per share, thereby dropping the price to \$3.00 per share, damaging Plaintiff in an amount not less than \$420,000.00. In its second cause of action, based upon fraud, Struthers alleges it relied upon Defendants' material misrepresentations of fact to its detriment, seeking damages of not less than \$420,000.00 and also seeking punitive

damages in a like amount because of Defendants' alleged fraudulent actions and inducements.

Defendants first argue that the "Investor Relations Contract" (Contract) provides for a forum in the event of suit, citing the second sentence of paragraph 5 which states: "Proper venue and jurisdiction of this agreement shall be the Circuit Court in Orange County, Florida." Defendants argue this places proper venue in the United States District Court for the Middle District of Florida.

Defendants further aver the terms of the "Investor Relations Contract" are incorporated by reference into the "Client Service Agreement" (Agreement) thereby placing the choice of forum for both contracts in Florida. However, the Court rejects the latter argument out-of-hand, there being no incorporation by reference of the Contract into the Agreement.

Defendants DeCesare and Messler have filed an additional Motion To Dismiss (docket # 8), with supporting affidavits, premised upon an allegation that no personal jurisdiction over them exists in this Court because of insufficient contacts with this forum.

Plaintiff apparently relies upon 28 U.S.C. § 1391(a)(2) to place venue in this district. That section provides:

"(a) A civil action wherein jurisdiction is founded only on diversity of citizenship may, except as otherwise provided by law, be brought only in . . . (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, . . ."

While the pleadings and record are scant as to specific facts concerning the alleged breach of contract(s) and fraudulent acts,

the Court is of the view that it is highly probable the majority of the acts or omissions complained of, and therefore witnesses thereto, occurred in the State of Florida.

Further, from the pleadings and the record it is apparent to the Court the most convenient forum for all parties would be a United States District Court in Florida. 28 U.S.C. § 1404 provides in part as follows:

"(a) For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought."

The Court concludes this action may have been brought in Florida under §1391 (a) and/or (c).

Authority exists for this Court to act *sua sponte* to transfer this case to another federal district court. Kirby v. Mercury Sav. and Loan Ass'n., 755 F.Supp. 445 (D.D.C. 1990). No need exists to require parties to file a formal motion for change of venue. Empire Gas Corp. v. True Value Gas of Florida, Inc., 702 F.Supp. 783 (W.D.Mo. 1989). Typically, when a transfer is proposed *sua sponte* parties should be given notice and opportunity to be heard. Mobil Corp. v. S.E.C., 550 F.Supp. 67 (S.D.N.Y. 1982). However, in view of the Court's disposition of the choice of forum issue, *infra*, the Court need not transfer the matter to Florida under §1404.

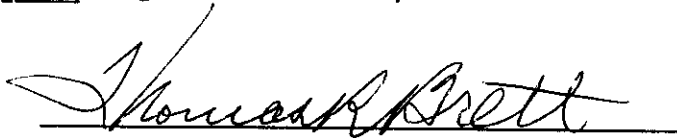
Plaintiff concedes forum selection clauses which are part of enforceable contracts are considered to be *prima facie* valid. Milk 'N' More, Inc. v. Beavert, 963 F.2d 1342 (10th Cir. 1992). Plaintiff argues that such a clause, however, does not create an absolute

duty for a court to transfer nor create an absolute right as between the parties to litigate every dispute in the named forum. Hospah Coal Co. v. Chaco Energy Co., 673 F.2d 1161 (10th Cir. 1982). Plaintiff further argues that a showing that the provision itself is invalid because of fraud justifies a court in denying enforcement thereof.

From the record it appears Atlantic, pursuant to the Agreement, may have acquired option rights in Struthers' stock. It further appears by letters dated July 16, 1992, Struthers was advised that Atlantic had forwarded the sum of \$420,000.00 to Pullman on Struthers behalf and that Pullman acknowledged Struthers' marketing campaign program was paid in full. These statements may ultimately prove to be untrue. However, the Court has before it mere allegations of fraud by Struthers which it deems insufficient to void the choice of forum clause in the Contract.

The Court concludes this matter should be and the same is hereby transferred to the United States District Court for the Middle District of Florida.

IT IS SO ORDERED, this 18th day of November, 1993.

A handwritten signature in cursive script, reading "Thomas R. Brett", written over a horizontal line.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET

DATE 11-19-93

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

NOV 18 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

JUDI E. GROVE AND ROBERT L.
GROVE, Individually, and as
Parents and Next Friends of
JOSHUA E. GROVE, a minor,

Plaintiffs,

vs.

No. 93-C-0176E

MICHAEL JOHN RICHARDSON;
CORPORATION OF PRESIDING
BISHOP OF THE CHURCH OF
JESUS CHRIST OF LATTER DAY
SAINTS; AND PREFERRED RISK
MUTUAL INSURANCE COMPANY,

Defendants.

STIPULATION OF DISMISSAL

COME NOW the Plaintiffs, Judi E. Grove and Robert L. Grove, individually and as parents and next friends of Joshua E. Grove, a minor, and the Defendants Michael John Richardson and Corporation of Presiding Bishop of the Church of Jesus Christ of Latter Day Saints, by and through their respective attorneys, and in accordance with Rule 41(a)(1)(ii) of the Federal Rules of Civil Procedures, hereby stipulate to the dismissal with prejudice of all claims and causes of action involved herein with prejudice for the reason that all matters, causes of action and issues in the case have been settled, compromised and released herein.

WILLIAM GREGORY JAMES

Attorney for Plaintiffs

STEPHEN C. WILKERSON

Attorney for Defendants

DATE NOV 19 1993

FILED

NOV 17 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

SANDRA JANE JARVIS,
Plaintiff,
vs.
MARRIOTT HOTELS, INC.,
Defendant.

No. 92-C-648-B

ORDER OF DISMISSAL WITH PREJUDICE

The Court, having reviewed and considered the written Joint Application for Order of Dismissal With Prejudice filed by the parties in this action, and for good cause shown, finds that the above-entitled cause and all claims asserted herein should be dismissed with prejudice.

IT IS THEREFORE ORDERED that as a part of the settlement agreement between the parties and in consideration for receipt of payment, the plaintiff will immediately execute a Release in Full of All Claims releasing the defendant. Further, plaintiff will immediately execute a certain Non-Disclosure Agreement prohibiting the disclosure and dissemination of the monetary terms of the agreement and negotiations. The terms of the settlement agreement are to be kept confidential and may not be discussed or disclosed to any individual, firm, or corporation who is not a party to this action and that any violation of such agreement is a violation of the order of this Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court, that the above-entitled cause and all claims asserted herein are hereby

dismissed with prejudice to any right of the plaintiff to refile or pursue any further actions, suits, or claims thereon.

S/ THOMAS R. BRETT

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

NOV 18 1993

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

JERALD G. WILSON,
an individual,

Plaintiff,

vs.

HOLIDAY INNS, INC.,
a Tennessee corporation; and
GREAT SOUTHERN FEDERAL SAVINGS
AND LOAN ASSOCIATION, AND
RESOLUTION TRUST COMPANY AS
RECEIVER/CONSERVATOR FOR
GREAT SOUTHERN FEDERAL SAVINGS
AND LOAN ASSOCIATION,

Defendants.

Case No. 92-C-984-C ✓

FILED

NOV 18 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ADMINISTRATIVE CLOSING ORDER

The Parties having entered into a settlement agreement, it is hereby ordered that the Clerk administratively terminate this action in his records, without prejudice to the rights of the Parties to reopen the proceedings for good cause shown for the entry of any stipulation or order, or for any other purpose required to obtain a final determination of the litigation.

IF, within sixty (60) days hereof, the Parties have not reopened for the purpose of obtaining a final determination herein, this action shall be deemed dismissed with prejudice.

IT IS SO ORDERED this 15th day of November, 1993.


UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET

DATE 11-18-93

FILED

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

NOV 17 1993

Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

RONALD ROBERTS

Plaintiff,

v.

Case No. 93-C-0118-E

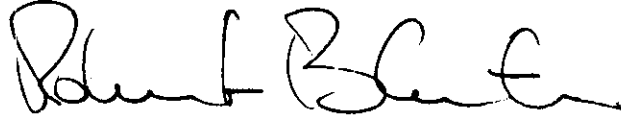
DANA CORPORATION

A VIRGINIA CORPORATION

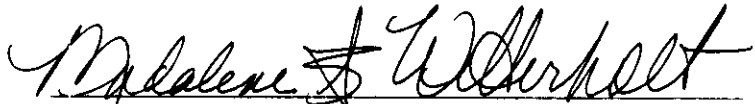
Defendant.

JOINT STIPULATION OF DISMISSAL

Pursuant to Rule 41(a) of the Federal Rules of Civil Procedure, the plaintiff, Ronald Roberts, hereby stipulates with the defendant, Dana Corporation, that this action shall be dismissed with prejudice. Each party is to bear its own costs and attorney fees.



Robert B. Sartin, Esq.
Barrow, Gaddis, Griffith & Grimms
Suite 300
610 South Main
Tulsa, Oklahoma 74119-1248
ATTORNEYS FOR PLAINTIFF,
RONALD ROBERTS



H. Leonard Court, OBA 1948
Madalene A.B. Witterholt, OBA 10528
CROWE & DUNLEVY
A Professional Corporation
Suite 500
321 South Boston
Tulsa, Oklahoma 74103-3313
(918) 592-9800
ATTORNEYS FOR DEFENDANT
DANA CORPORATION

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

ATLANTIC RICHFIELD COMPANY,) Consolidated Case Nos.
)
Plaintiff,) 89-C-868-B
) 89-C-869-B
v.) 90-C-859-B
)
AMERICAN AIRLINES, INC., ET AL.)
)
Defendants.)

FILED

NOV 17 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

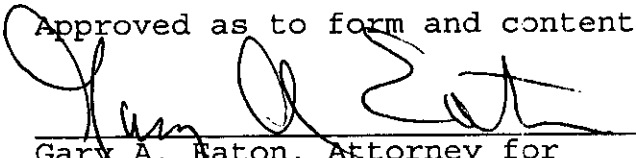
ORDER FOR DISMISSAL WITHOUT PREJUDICE


Now on this 16 day of November, 1993, upon presentation of the Stipulation for Dismissal Without Prejudice executed by Plaintiff Atlantic Richfield Company and Defendants Raymond E. Kizer, Ponca Drum Recycling, Inc., and Ponca Barrel and Drum, Inc., the Court finds and adjudges that, contingent upon payment of all outstanding Liaison Counsel and Group IV Lead Counsel fees, all claims of Atlantic Richfield Company set forth herein against Raymond E. Kizer, Ponca Drum Recycling, Inc., and Ponca Barrel and Drum, Inc. should be and are hereby dismissed without prejudice to any future action upon such claims and that each of these parties shall bear and be responsible for its own costs and expenses incurred herein.

S/ THOMAS R. BRITT

Judge

Approved as to form and content:


Gary A. Eaton, Attorney for
Atlantic Richfield Company


Robert F. Morgan
Attorney for Raymond E. Kizer,
Ponca Drum Recycling, Inc.,
and Ponca Barrel and Drum, Inc.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

ATLANTIC RICHFIELD COMPANY,) Consolidated Case Nos.
)
Plaintiff,) 89-C-868-B
) 89-C-869-B
v.) 90-C-859-B
)
AMERICAN AIRLINES, INC., ET AL.)
)
Defendants.)

FILED

NOV 16 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

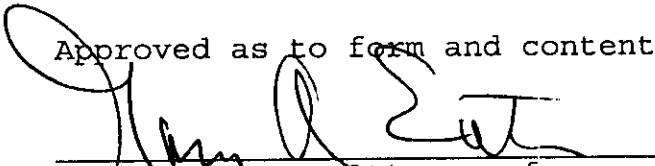
ORDER FOR DISMISSAL WITHOUT PREJUDICE

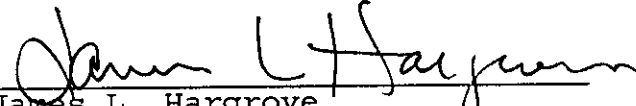
Now on this 16 day of November, 1993, upon presentation of the Stipulation for Dismissal Without Prejudice executed by Plaintiff Atlantic Richfield Company and Defendants Norton Shannon and Shannon Drum Service, Inc., the Court finds and adjudges that, contingent upon payment of all Liaison Counsel and Group IV Lead Counsel fees, all claims of Atlantic Richfield Company set forth herein against Norton Shannon and Shannon Drum Service, Inc. should be and are hereby dismissed without prejudice to any future action upon such claims and that each of these parties shall bear and be responsible for its own costs and expenses incurred herein.

S/ THOMAS R. BRETT

Judge

Approved as to form and content:


Gary A. Eaton, Attorney for
Atlantic Richfield Company


James L. Hargrove
Attorney for Norton Shannon
and Shannon Drum Service, Inc.

ENTERED 91601993KET
DATE NOV 18 1993

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

DOUGLAS J. CARPA, as First Trust)
Officer of United Insurance Group)
Trust and UNITED INSURANCE GROUP)
TRUST, trustee for FAITH)
ENTERPRISES TRUST,)

Plaintiffs,)

vs.)

UNITED STATES DEPARTMENT OF)
TREASURY, INTERNAL REVENUE SERVICE,)
BRENDA JONES, Revenue Officer, and)
the ATTORNEY GENERAL OF THE UNITED)
STATES,)

Defendants.)

Case No. 93-C-601-B ✓

FILED

NOV 16 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER

Now before the Court is the Motion to Dismiss the Complaint or, in the Alternative, Motion for Summary Judgment of Defendants United States Department of Treasury, Internal Revenue Service, Brenda Jones, and the Attorney General of the United States (Docket # 2).

Undisputed Facts¹

Plaintiffs Douglas Carpa, United Insurance Group Trust, and Faith Enterprises Trust (collectively, "Faith") bring this action

¹ The undisputed facts relied on by the Court are those set forth in Defendants' memorandum in support of their motion. Because of Plaintiff's failure to respond to Defendants' motion for summary judgment, those facts are deemed admitted pursuant to Rule 15 of the Rules of the United States District Court for the Northern District of Oklahoma. However, it is also noted that the undisputed facts as listed by Defendants are supported by the record before the court.

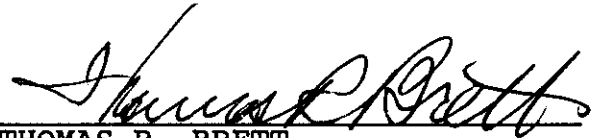
for "conversion, wrongful levy, extortion, and injunctive relief." Plaintiffs allege that Faith holds lawful title to certain real property located on 407 Bay street, City of Miami, Ottawa County, Oklahoma ("property"). Plaintiffs do not allege any jurisdictional statute in their complaint.

On September 21, 1992, the IRS assessed penalties against Evelyn Jean Bale ("Bale") in the amount of \$86,524.83 under Section 6672 of the Internal Revenue Code (26 U.S.C. § 6672) as a responsible person of Glenn Berry Operating Co., Inc., Oklahoma City, Oklahoma, which failed to remit trust fund taxes for the third quarter of 1989, the second quarter of 1990, and all four quarters of 1991. Payment was not made according to this assessment and a federal tax lien arose as a matter of law as of the date of the assessment attaching to all property then belonging to her or thereafter acquired by her. At the time of the assessment, Bale had an interest in the Bay Street property, to which the federal tax lien attached. On April 29, 1992, Bale conveyed the property to Faith, and on May 5, 1993, the IRS filed a Notice of Federal Tax Lien against Faith, as nominee of Bale. On April 19, 1993, the IRS seized the property and scheduled it for sale on July 9, 1993, to satisfy the outstanding federal taxes of Bale. This lawsuit was commenced on July 1, 1993, and on August 2, 1993, the IRS released the levy against the property.

Legal Analysis

26 U.S.C. § 7426² allows a person claiming an interest in property (other than the taxpayer) to bring suit against the United States in the appropriate district court when an IRS tax levy has been made on the property. The plaintiff in an action for wrongful levy must show (1) that it has an interest in , or a lien upon the property, and (2) that the property was "wrongfully levied upon." 26 U.S.C. §7426(a)(1). In the present case, it is undisputed that the first requirement, that Faith have an interest in the property, is met. However, the second requirement is not satisfied. The levy on the property was released on August 2, 1993, rendering this action moot. Therefore, the Court finds that Defendants' Motion to Dismiss should be granted.

IT IS SO ORDERED THIS 15 DAY OF NOVEMBER, 1993.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

² Defendants also argue that the United States Department of Treasury, Internal Revenue Service, Brenda Jones, and the Attorney General of the United States are not proper party defendants. The Court, however, does not reach this argument because of its ruling on Defendants' Motion to Dismiss.

NOV 18 1993

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,
Plaintiff,

vs.

DAN CORBIN JONES; SHARON KAY
JONES a/k/a SHARON K. JONES
a/k/a SHARON JONES; LUKE
DRAFFIN; PAIGE DRAFFIN a/k/a
PAIGE E. DRAFFIN; COMERCIAL
CREDIT PLAN, INC.; COUNTY
TREASURER, Creek County,
Oklahoma; BOARD OF COUNTY
COMMISSIONERS, Creek County,
Oklahoma,

Defendants.

FILED

NOV 17 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

CIVIL ACTION NO. 93-C-19-B

DEFICIENCY JUDGMENT

This matter comes on for consideration this 16 day
of Nov, 1993, upon the Motion of the Plaintiff, United
States of America, acting on behalf of the Secretary of Veterans
Affairs, for leave to enter a Deficiency Judgment. The Plaintiff
appears by Stephen C. Lewis, United States Attorney for the
Northern District of Oklahoma, through Phil Pinnell, Assistant
United States Attorney, and the Defendants, Dan Corbin Jones and
Sharon Kay Jones a/k/a Sharon K. Jones a/k/a Sharon Jones, appear
neither in person nor by counsel.

The Court being fully advised and having examined the
court file finds that copies of Plaintiff's Motion and
Declaration were mailed by first-class mail to Dan Corbin Jones
and Sharon Kay Jones a/k/a Sharon K. Jones a/k/a Sharon Jones,
Route 2, Box 251 T, Sapulpa, Oklahoma 74066, and to all answering
parties and/or counsel of record. The Court further finds that
the amount of the Judgment rendered on April 26, 1993, in favor
of the Plaintiff United States of America, and against the
Defendants, Dan Corbin Jones and Sharon Kay Jones a/k/a Sharon K.

Jones a/k/a Sharon Jones, with interest and costs to date of sale is \$28,233.76.

The Court further finds that the appraised value of the real property at the time of sale was \$27,000.00.

The Court further finds that the real property involved herein was sold at Marshal's sale, pursuant to the Judgment of this Court entered April 26, 1993, for the sum of \$23,177.00 which is less than the market value.

The Court further finds that the Marshal's sale was confirmed pursuant to the Order of this Court on November 9, 1993.

The Court further finds that the Plaintiff, United States of America on behalf of the Secretary of Veterans Affairs, is accordingly entitled to a deficiency judgment against the Defendants, Dan Corbin Jones and Sharon Kay Jones a/k/a Sharon K. Jones a/k/a Sharon Jones, as follows:

Principal Balance plus pre-Judgment Interest as of 4-26-93	\$ 26,630.84
Interest From Date of Judgment to Sale	295.06
Late Charges to Date of Judgment	166.80
Appraisal by Agency	500.00
Abstracting	272.50
Publication Fees of Notice of Sale	143.56
Court Appraisers' Fees	<u>225.00</u>
TOTAL	\$ 28,233.76
Less Credit of Appraised Value	- <u>27,000.00</u>
DEFICIENCY	\$ 1,233.76

plus interest on said deficiency judgment at the legal rate of 3.38 percent per annum from date of deficiency judgment until paid; said deficiency being the difference between the amount of

Judgment rendered herein and the appraised value of the property herein.

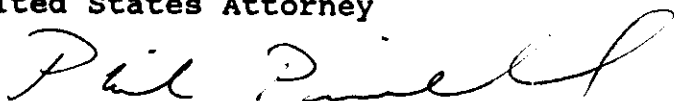
IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the United States of America on behalf of the Secretary of Veterans Affairs have and recover from Defendants, Dan Corbin Jones and Sharon Kay Jones a/k/a Sharon K. Jones a/k/a Sharon Jones, a deficiency judgment in the amount of \$1,233.76, plus interest at the legal rate of 3.38 percent per annum on said deficiency judgment from date of judgment until paid.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:

STEPHEN C. LEWIS
United States Attorney



PHIL PINNELL, OBA #7169
Assistant United States Attorney
3900 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

PP/esr

BILLY R. LEMONS,
Plaintiff,
vs.
CHARLIE ARNOLD, et al.,
Defendants.

**Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA**

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET

DATE 11-17-93

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

LORNA WILKINS, Executrix of
the Estate of CHRISTOPHER J.
PAHSETOPAH, Deceased,

Plaintiff,

vs.

The UNITED STATES of America, et al.,

Defendants.

Case No. 91-C-0042-E

FILED

NOV 16 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

JUDGMENT ON DECISION BY THE COURT

This action came on for trial before the Court, Honorable James O. Ellison, Chief Judge, presiding, and the issues having been duly tried and a decision having been duly rendered,

It is Ordered and Adjudged that the Plaintiff, Lorna Wilkins, Executrix of the Estate of Christopher J. Pahsetopah, Deceased, shall recover from the Defendant, The United States of America, et al., the sum of \$294,252.39, plus such reasonable costs of her action to the extent allowed by law.


Dated at Tulsa, Oklahoma, this 16 day of November, 1993.

S/ JAMES O. ELLISON

CLERK OF THE COURT

Approved as to form:


GERALD W. WRIGHT
Attorney for Plaintiff



KATHLEEN BLISS ADAMS
Assistant United States Attorney

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,
Plaintiff,

vs.

PAUL E. SUMTER; TERESSA L.
SUMTER; JOHNNY NATION;
KATHY NATION; COUNTY TREASURER,
Tulsa County, Oklahoma; and
BOARD OF COUNTY COMMISSIONERS,
Tulsa County, Oklahoma,

Defendants.

FILED

NOV 15 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

CIVIL ACTION NO. 92-C-411-B

ORDER

Upon the Motion of the United States of America, acting on behalf of the Secretary of Veterans Affairs, by Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Wyn Dee Baker, Assistant United States Attorney, and for good cause shown it is hereby ORDERED that this action shall be dismissed with prejudice.

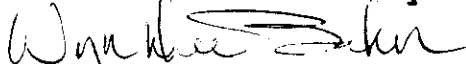
Dated this 15 day of Nov., 1993.

S/ THOMAS R. BRET

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:

STEPHEN C. LEWIS
United States Attorney


WYN DEE BAKER, OBA #465
Assistant United States Attorney
3900 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

NOV 15 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

GEODYNE PRODUCTION COMPANY, a
Delaware corporation,

Plaintiff,

vs.

EMPIRE FINANCIAL CORPORATION,
a Texas corporation,

Defendant.

Case No. 92-C-375-B

JUDGMENT

On November 5, 1993, the captioned matter came before this Court for the determination of damages suffered by Plaintiff; the issue of Defendant's liability was established by this Court's Order dated October 22, 1993. Present was Plaintiff Geodyne Production Company through its attorney Michael G. Daniel. Defendant Empire Financial Corporation, although notified of the hearing, did not appear.

The Court, after hearing the evidence of witnesses and arguments of counsel, finds in favor of the Plaintiff, Geodyne Production Company, for the amount of \$562,571.00 for breach of contract, plus \$16,565.00 for legal fees and costs directly incurred as a result of said breach, plus pre-judgment interest n the amount of \$72,447.53.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Plaintiff, Geodyne Production Company, have and recover judgment of and from Defendant, Empire Financial Corporation, in the sum of \$651,583.53.

Plaintiff is also awarded post-judgment interest pursuant to 28 U.S.C. §1961 at a rate of 3.38%. Plaintiff is further granted leave to timely file for costs of this action and attorneys' fees pursuant to Local Rule 6.

DATED this 15 day of November, 1993.

S/ THOMAS R. BRETT,

THOMAS R. BRETT
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

ENTERED ON DOCKET
DATE NOV 17 1993

FILED

NOV 15 1993
Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

MICHAEL LEWIS MASON,

Plaintiff,

vs.

SHEILA DIANE OTT,

Defendant.

Case No.: 93-C-919-B

ORDER

NOW ON THIS 15 day of Nov., the Honorable Thomas R. Brett
grants the Motion to Remand.

S/ THOMAS R. BRETT,

HONORABLE THOMAS R. BRETT

DATE NOV 17 1993

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

NOV 15 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

SHELTER MUTUAL INSURANCE COM-
PANY,

Plaintiff,

vs.

PATSY CHAPPELL,

Defendant.

No. 93-C-536 B

DECLARATORY JUDGMENT

NOW on this 15th day of October, 1993, the Court, having found the Defendant Patsy Chappell to be in default, makes the following findings:

1) The Plaintiff Shelter Mutual Insurance Company ("Shelter") is a Missouri corporation with its principle place of business in Columbia, Missouri. Defendant Patsy Chappell is a citizen and resident of Tulsa County, Oklahoma and is within the venue of the United States District Court for the Northern District of Oklahoma. Thus, diversity of citizenship exists between the parties.


2) Shelter issued a policy of homeowners insurance to the Defendant in Policy No. 35-71-986658-0001.

3) This is a case of actual controversy brought pursuant to 28 U.S.C. § 2201 for a Judgment finding that Shelter has no liability coverage under its policy of insurance issued to Defendant for the incidents and conduct complained of in Petitions filed against Defendant Patsy Chappell in the District Court of Tulsa County, Oklahoma in cases numbered CJ-93-1980 and CJ-93-1891.

4) The Defendant has made demand upon Shelter as her insurer to defend and indemnify her against the lawsuits filed in the

District Court of Tulsa County, Oklahoma in cases numbered CJ-93-1980 and CJ-93-1891 naming her as a defendant.

5) There is no coverage under the Defendant's insurance policy with Plaintiff Shelter for the conduct and incidents alleged in the Tulsa County, Oklahoma lawsuits due to the Defendant's operation of a child care business in her home known variously as Chappell Day Care and/or the Chappell Family Day Care Center. Therefore, IT IS THE JUDGMENT OF THIS COURT that Shelter has no duty to defend nor indemnify the Defendant for any verdicts or settlements entered in the Tulsa County, Oklahoma lawsuits for the claims arising out of the Defendant's operation of a child care business in her home.


Honorable Thomas R. Brett, Judge

ENTERED ON DOCKET

DATE 11-16-93

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

F I L E D

HAROLD DEAN HORNSBY,

Petitioner,

vs.

DAN M. REYNOLDS, et al.,

Respondent.

)
)
)
)
)
)
)
)
)
)

NOV 16 1993

No. 93-C-485-E

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTH DISTRICT OF OKLAHOMA

ORDER

Before the Court is Respondent's motion to dismiss for failure to exhaust state court remedies. Respondent asserts that Petitioner has not exhausted his state court remedies because his direct appeal is presently pending before the Oklahoma Court of Criminal Appeals. Respondent notes that the petition in error was filed on July 21, 1993, and that the Petitioner's brief has not yet been filed.

Petitioner does not dispute that his direct appeal is presently pending, but argues that Respondent disregarded this Court's order by failing to file a copy of Petitioner's brief on appeal and of the opinion of the Oklahoma Court of Criminal Appeals. Petitioner also argues the merits of his petition.

The Supreme Court "has long held that a state prisoner's federal petition should be dismissed if the prisoner has not exhausted available state remedies as to any of his federal claims." Coleman v. Thompson, 111 S. Ct. 2546, 2554-55 (1991). To exhaust a claim, Petitioner must have "fairly presented" that specific claim to the Oklahoma Court of Criminal Appeals. See

Picard v. Conner, 404 U.S. 270, 275-76 (1971). The exhaustion requirement is based on the doctrine of comity. Darr v. Burford, 339 U.S. 200, 204 (1950). Requiring exhaustion "serves to minimize friction between our federal and state systems of justice by allowing the State an initial opportunity to pass upon and correct alleged violations of prisoners' federal rights." Duckworth v. Serrano, 454 U.S. 1, 3 (1981) (per curiam).


It is clear from the record in this case that the Petitioner has not exhausted his state remedies as he has a pending direct appeal. See Sherwood v. Tomkins, 716 F.2d 632, 634 (9th Cir. 1983) (even if the claim petitioner raises in federal court has been fairly presented once to the highest state court, petitioner has not exhausted his state remedies if he has a pending direct appeal in state court); Parkhurst v. State of Wyoming, 641 F.2d 775, 776 (10th Cir. 1981) (court properly denied habeas corpus relief for failure to exhaust state remedies because direct criminal appeal was pending).

ACCORDINGLY, IT IS HEREBY ORDERED that:

- (1) Respondents' motion to dismiss [docket #7] is **granted**.
- (2) Petitioner's motion to supplement the record, for discovery, and for an evidentiary hearing [docket #14] is **denied**.
- (3) Petitioner's motion for reconsideration [docket #16] is **denied**.
- (4) Petitioner's motion to withdraw motion [docket #17] is **granted**.

(5) The petition for a writ of habeas corpus is **dismissed**.

SO ORDERED THIS 15th day of November, 1993.


JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

ENTERED ON DOCKET

DATE 11-16-93

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

BRYANT DEMETRIUS FORREST,

Petitioner,

vs.

DAN REYNOLDS, et al.,

Respondent.

No. 93-C-269-E ✓

FILED

NOV 16 1993

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER

Before the Court is Petitioner's "motion to withdraw petition for writ of habeas corpus without prejudice."

The Court construes Petitioner's motion as one to dismiss the above captioned case without prejudice at this time. **ACCORDINGLY, IT IS HEREBY ORDERED, that** Petitioner's "motion to withdraw" [docket # 6] is **granted** and the above captioned case is **dismissed without prejudice.**

SO ORDERED THIS 15th day of November, 1993.


JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

ENTERED ON DOCKET

DATE 11-16-93

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

NICKIE J. AIRINGTON,

Plaintiff,

vs.

RON CHAMPION, et al,

Defendants.

No. 93-C-396-E

FILED

NOV 16 1993

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER


Before the Court is Defendants' motion to dismiss filed on July 28, 1993. Plaintiff has not responded.

Plaintiff's failure to respond to Defendants' motion constitutes a waiver of objection to the motion, and a confession of the matters raised by the motion. See Local Rule 15(A).

ACCORDINGLY, IT IS HEREBY ORDERED that:

- (1) Defendants' motion to dismiss [docket #4] is **granted** and the above captioned case is **dismissed without prejudice**.

SO ORDERED THIS 15th day of November, 1993.


JAMES O. ELLISON, CHIEF JUDGE
UNITED STATES DISTRICT COURT

ENTERED ON DOCKET

DATE NOV 16 1993

FILED

NOV 15 1993

Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

ATLANTIC RICHFIELD COMPANY,

Plaintiff,

v.

AMERICAN AIRLINES, INC.,
et al.,

Defendants.

AND CONSOLIDATED ACTIONS

Consolidated Case Nos.

89-C-868 B

89-C-869 B

89-C-859 B

ORDER OF DISMISSAL WITHOUT PREJUDICE

Upon consideration of the Stipulation of Dismissal Without Prejudice executed by Plaintiff, Atlantic Richfield Company; the Group III Defendants Glenn E. Wynn, Jr., Vacuum & Pressure Tank Truck Services Inc. and Vacuum Refining Company (hereinafter "Group III Defendants"); the Group I Defendants Baker Hughes Incorporated, Borg-Warner Corporation, Burgess-Norton Mfg. Co. (a Division of AMSTED Industries Incorporated), Chief Supply Corporation (sued as Chief Chemical Supply and Chief Chemical & Supply, Inc.), Crane Carrier Corp., Dover Corporation, Groendyke Transport, Inc., H.W. Allen Co., f/k/a MK & O Coach Lines, Jerry Inman Trucking, Inc., Kansas Industrial Environmental Services, Inc., McDonnell Douglas Corporation, Paccar, Inc., Phillips Petroleum Company, Ramsey Winch Company, Ryder Truck Rental, Inc. (for itself and as successor to Wilco Truck), The

Uniroyal Goodrich Tire Company, Webco Industries, Inc., and Whirlpool Corporation (hereinafter the "Group I Defendants"); Defendants Container Products, Inc. and Container Products of Oklahoma; Defendants Raymond Kizer, Ponca Barrel & Drum Inc. and Ponca Drum Recycling Inc.; and Defendant, James Miller, the Court finds, adjudges and orders as follows:

1. All claims asserted and deemed filed by Atlantic Richfield Company and James Miller against each other are dismissed without prejudice to any future action upon such claims, and Atlantic Richfield Company and James Miller shall bear and be responsible for its own costs, expenses and attorneys fees incurred in this case;

2. All claims asserted and deemed filed by the Group III Defendants and James Miller against each other are dismissed without prejudice to any future action upon such claims, and the Group III Defendants and James Miller shall bear and be responsible for its own costs, expenses and attorneys fees incurred in this case; and,

3. All claims asserted and deemed filed by the Group I Defendants and James Miller against each other are dismissed without prejudice to any future action upon such claims, and the Group ^I~~III~~ Defendants and James Miller shall bear and be responsible for its own costs, expenses and attorneys fees incurred in this case; and,

4. All claims asserted and deemed filed by Defendants Container Products, Inc., and Container Products of Oklahoma and James Miller against each other are dismissed without prejudice to any future action upon such claims, and Container Products, Inc., and Container Products of Oklahoma and James Miller shall bear and be responsible for its own costs, expenses and attorneys fees incurred in this case; and,

5. All claims asserted and deemed filed by Defendants Raymond Kizer, Ponca Barrel & Drum Inc. and Ponca Drum Recycling Inc. and James Miller against each other are dismissed without prejudice to any future action upon such claims, and Raymond Kizer, Ponca Barrel & Drum Inc. and Ponca Drum Recycling Inc. and James Miller shall bear and be responsible for its own costs, expenses and attorneys fees incurred in this case; and,

5. James Miller shall pay the assessments to William Anderson, liaison counsel, and John Tucker, lead counsel for the Group IV Defendants, as finally determined and approved by the Court.

Dated this 15th day of November, 1993.


UNITED STATES DISTRICT JUDGE

Approved as to form and content:

DEFENDANT JAMES MILLER

RICHARD C. FORD, OBA # 3028
MARK B. McDANIEL, OBA # 14275
CROWE & DUNLEVY A P.C.
1800 Mid-America Tower
20 North Broadway
Oklahoma City, OK 73102

By: 

Attorneys for Defendant
James Miller and Miller Truck
Lines, Inc.

**PLAINTIFF ATLANTIC RICHFIELD COMPANY
JESS WOMACK**

and

LARRY G. GUTTERRIDGE
LINDA S. PETERSON
ALAN AU
Sidley & Austin
555 West Fifth Street
Los Angeles, CA 90013

and

GARY EATON
1717 East 15th Street
Tulsa, OK 74104

By: 

Attorneys for Plaintiff
Atlantic Richfield Company

GROUP I DEFENDANTS

CLAIRE V. EAGAN, OBA # 554
SUSAN L. GATES
HALL, ESTILL, HARDWICK, GABLE,
GOLDEN & NELSON
4100 Bank of Oklahoma Tower
Tulsa, OK 74172-0154

By: 

Attorneys for Group I
Defendants

DEFENDANTS CONTAINER PRODUCTS INC. AND
CONTAINER PRODUCTS OF OKLAHOMA INC.

MARY QUINN-COOPER
BENTON T. WHEATLEY
Rhodes, Hieronymus, Jones,
Tucker & Gable
15 W. 6th St., Ste. 2800
Tulsa, OK 74119-5430

By: 

Attorneys for Container
Products Inc. and Container
Products of Oklahoma Inc.

DEFENDANTS RAYMOND KIZER, PONCA BARREL & DRUM
AND PONCA DRUM RECYCLING INC.

ROBERT F. MORGAN, JR.
Wheeler, Wheeler, Morgan
Faulkner & Ballard
50 Penn Place, Ste. 450
Oklahoma City, OK 73118

By: 

Attorney for Raymond Kizer,
Ponca Barrel & Drum and
Ponca Drum Recycling Inc.

GROUP III DEFENDANTS GLENN E. WYNN, JR.,
VACUUM & PRESSURE TANK TRUCK SERVICES INC.
AND VACUUM REFINING COMPANY

MICHAEL D. DAVIS
STEVEN M. HARRIS
Doyle and Harris
Southern Hills Tower
2431 E. 61st St., Ste. 260
Tulsa, OK 74136

By: 

Attorneys for Group III
Defendants Glenn E. Wynn, Jr.,
Vacuum & Pressure Tank Truck Services
Inc. and Vacuum Refining Company

184.93BMBM

ENTERED ON DOCKET

DATE NOV 16 1993

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED
IN OPEN COURT

NOV 15 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ATLANTIC RICHFIELD COMPANY,

Plaintiff,

vs.

AMERICAN AIRLINES, INC.,
et al.

Defendants.

AND CONSOLIDATED ACTIONS

Case Nos. 89-C-868 B;
89-C-869 B;
90-C-859 B

ORDER

Now on this 15th day of November, 1993, comes on for hearing
the following Applications:

Application for Authorization of Payment of Fees, filed
by Charles W. Shipley, Settlement Coordinator, on October
29, 1993 (Docket Entry 1133);

Application for Authorization of Payment of Fees, filed by
William C. Anderson, Liaison Counsel, on October 29, 1993
(Docket Entry 1134); and

Application for Authorization of Payment of Fees, filed by
Martin A. Frey, Settlement Judge, on October 29, 1993 (Docket
Entry 1135).

No objections have been filed with respect to any of said
Applications, and no objection is made in open Court.

The Court finds that each of said Applications is in
compliance with the rules of this Court; that the fees and charges
set forth therein are reasonable and proper in all respects; and
that each of said Applications should be approved.

IT IS THEREFORE ORDERED that the above-referenced Applications
be and the same hereby are approved, and Liaison Counsel is hereby
authorized and ordered to pay the same forthwith from the

1174

Settlement Coordinator/Defendants' Document Depository Account, as to the Application of the Settlement Coordinator, Mr. Shipley, from the Liaison Counsel/Settlement Judge Account, as to the Applications of the Settlement Judge, from the Liaison Counsel/Settlement Judge Account as to that portion of the Application of Mr. Anderson, Liaison Counsel, for Liaison Counsel services and expenses, and from the Settlement Coordinator/Defendants' Document Depository Account as to that portion of the Application of Mr. Anderson, Liaison Counsel, for Document Depository services and expenses.



John Leo Wagner
UNITED STATES MAGISTRATE JUDGE

NOV 16 1993

DATE

FILED
IN OPEN COURT

NOV 15 1993

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

ATLANTIC RICHFIELD COMPANY,

Plaintiff,

vs.

AMERICAN AIRLINES, INC.,
et al.

Defendants.

AND CONSOLIDATED ACTIONS

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

Case NOS. 89-C-868 B;
89-C-869 B;
90-C-859 B

ORDER

On November 15, 1993, there came on for hearing Liaison Counsel Accounting No. 10 and Proposed Eleventh Assessment to Fund Settlement Coordinator/Defendants' Document Depository Account ("SC/DDD Account") and Liaison Counsel/Settlement Judge Account ("LC/SJ Account"). No objections to the Accounting No. 10 and Proposed Eleventh Assessment were filed in advance of the hearing, nor were any objections made at the hearing.

After review of said Accounting No. 10 and Proposed Eleventh Assessment, and after hearing the statements of Liaison Counsel in support of the Accounting No. 10 and Proposed Eleventh Assessment together with the arguments and statements of other counsel present, the Court finds that Liaison Counsel Accounting No. 10 should be approved, and that the Proposed Eleventh Assessment should be approved.

IT IS THEREFORE ORDERED:

1. Liaison Counsel Accounting No. 10 is hereby approved.
2. The 35 Defendants listed on Exhibit I hereto (said 35 Defendants are also designated by the word "yes" in Column XI of

Exhibit A hereto), shall pay an Eleventh Assessment of \$1,000 each to Liaison Counsel, 20% of which shall be allocated to the SC/DDD Account and 80% of which shall be allocated to the LC/SJ Account.

3. Plaintiff shall pay an Eleventh Assessment to Liaison Counsel of \$28,000, which Eleventh Assessment paid by Plaintiff shall be allocated entirely to the LC/SJ Account.

4. The Eleventh Assessments provided for in paragraphs 2 and 3 above shall be paid to Liaison Counsel by November 30, 1993.

SO ORDERED this 15th day of November, 1993.


UNITED STATES MAGISTRATE JUDGE

DEFENDANTS' WHICH SHOULD PAY ASSESSMENT #10

Group #1

1. AMSTEAD Industries Inc./Burgess Norton Manufacturing Co.
2. BW/IP International, Inc.
3. Chief Chemical & Supply, Inc.
4. Crane Carrier
5. Groendyke Transport Inc.
6. Kansas Industrial Environmental Services
7. McDonnell Douglas Corporation
8. M K & O Coach Lines, Inc.
9. Norris/O'Bannon Division of the Dover Corporation
10. Phillips Petroleum Company
11. Ramsey Winch
12. Ryder Truck Rental, Inc.
13. Webco Industries, Inc., d/b/a Southwest Tube Manufacturing Co.
14. Uniroyal Goodrich Tire Company
15. Whirlpool
16. Baker Hughes Incorporated
17. Jerry Inman Trucking, Inc.
18. PACCAR/Braden Winch

Group #3

19. Vacuum & Pressure Tank Truck Service and Glenn Wynn

Group #4

20. Albert Equipment Company
21. Burlington Northern Railroad (f/k/a Frisco Railroad)
22. URE Company (f/k/a Unit Rig & Equipment Company)
23. Capital City Oil Co., Inc., Marvin Spees, Glenn Spees and Frank Smith
24. Container Products, Inc. and Container Products of Oklahoma
25. Easley, Bobby and Marvin Easley
26. Fred Jones Ford of Oklahoma City
27. Fred Jones Ford of Tulsa
28. J.A. Riggs Tractor Company
29. James Miller
30. Moline Paint Manufacturing Company
31. Ponca Barrel & Drum, Ponca Drum Recycling, Raymond Kizer
32. Norton Shannon and Shannon Drum Service, Inc. (SDS, Inc.)
33. Tulsa Screw Products/United Industries
34. Western Company of N.A., Inc.

Group #5

35. United States of America and United States Postal Service

DEFENDANTS WHICH HAVE PAID ASSESSMENTS #1, 2, 3, 4, 5, 6, 7, 8, 9 AND 10
AND SHOULD PAY ASSESSMENT #11

	I. Ass. #1	II. Ass. #2	III. Ass. #3	IV. Ass. #4	V. Ass. #5	VI. Ass. #6	VII. Ass. #7	VIII. Ass. #8	IX. Ass. #9	X. Ass. #10	XI. Ass. #11
GROUP #1 - PRP Members											
AMSTEAD Industries Inc./Burgess	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Norton Manufacturing Company	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
BW/IP International, Inc.	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Chief Chemical & Supply, Inc./											
Chief Chemical Supply/Robert											
D. Kelly/Steve Majors	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Crane Carrier	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Greendyke Transport Inc.	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
KIES	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
McDonnell Douglas Corporation	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
M K & O Coach Lines, Inc.	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Norris/O'Bannon, Division of											
Dover Corporation	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Phillips Petroleum Company	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Ramsey Winch	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Ryder Truck Rental, Inc.	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Wabco Industries, Inc., d/b/a											
Southwest Tube Manufacturing Co.	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Uniroyal Goodrich Tire Company	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Whirlpool	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Baker Hughes Incorporated	No	No	No	No	No	No	No	No	No	No	No
Jerry Inman Trucking, Inc.	No	No	No	No	No	No	No	No	No	No	No
PACCAR/Braden Winch	No	No	No	No	No	No	No	No	No	No	No
Cintas Corporation/Industrial	No	No	No	No	No	No	No	No	No	No	No
Uniform & Towel Supply	No	No	No	No	No	No	No	No	No	No	No
Sullivan Trucking	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Majestic Lubricating Co.	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
American Airlines	Yes	Yes	Yes	Yes	Yes	No	No	No	No	No	No

DEFENDANTS WHICH HAVE PAID ASSESSMENTS #1, 2, 3, 4, 5, 6, 7, 8, 9 AND 10
AND SHOULD PAY ASSESSMENT #11

	I. Ass. #1	II. Ass. #2	III. Ass. #3	IV. Ass. #4	V. Ass. #5	VI. Ass. #6	VII. Ass. #7	VIII. Ass. #8	IX. Ass. #9	X. Ass. #10	XI. Ass. #11
<u>Group #1 - PRP Members (Continued)</u>											
City of Tulsa	Yes	Yes	Yes	Yes	Yes	No	No	No	No	No	No
Dowell, Inc.	Yes	Yes	Yes	Yes	Yes	No	No	No	No	No	No
Navistar International, successor of International Harvester Co.	Yes	Yes	Yes	Yes	Yes	No	No	No	No	No	No
Public Service Company of Oklahoma	Yes	Yes	Yes	Yes	Yes	No	No	No	No	No	No
Tulsa Airport Authority, and Richard Loyd Jones, Jr. Airport, successor of Riverside Airport	Yes	Yes	Yes	Yes	Yes	No	No	No	No	No	No
Barton Construction Company	Yes	No	No	No	No	No	No	No	No	No	No
Sears, Roebuck & Company	Yes	No	No	No	No	No	No	No	No	No	No
Tulsa Truck Rental	Yes	No	No	No	No	No	No	No	No	No	No
SUBTOTAL	26	23	23	23	23	21	21	19	19	19	18
<u>Group #2 - Owners/Lessees</u>											
Sand Springs Home	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No
Claco, Inc.	Yes	Yes	No	No	No	No	No	No	No	No	No
Ark Valley Gas Co., Inc.	Yes	No	No	No	No	No	No	No	No	No	No
Morrow Gill Lumber Company	Yes	No	No	No	No	No	No	No	No	No	No
Perry, Marshall and Melvins	Yes	No	No	No	No	No	No	No	No	No	No
Sand Springs General Store, Inc.	Yes	No	No	No	No	No	No	No	No	No	No
Advance Chemical Distribution	Yes	No	No	No	No	No	No	No	No	No	No
Green Country Credit Union (Armco)	Yes	No	No	No	No	No	No	No	No	No	No
SUBTOTAL	8	2	1	1	1	1	1	1	1	1	0

DEFENDANTS WHICH HAVE PAID ASSESSMENTS #1, 2, 3, 4, 5, 6, 7, 8, 9 AND 10
AND SHOULD PAY ASSESSMENT #11

	I. Ass. #1	II. Ass. #2	III. Ass. #3	IV. Ass. #4	V. Ass. #5	VI. Ass. #6	VII. Ass. #7	VIII. Ass. #8	IX. Ass. #9	X. Ass. #10	XI. Ass. #11
Group #3 - Operators											
Interstate Electric Company	Yes	Yes	Yes	Yes	Yes	No	No	No	No	No	No
Vacuum Refining Company	Yes	Yes	Yes	Yes	Yes	No	No	No	No	No	No
Vacuum & Pressure Tank Truck Service	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Glenn E. Wynn	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	No	No
SUBTOTAL	4	4	4	4	4	2	2	1	1	1	1
Group #3B - Other Operators											
William Creel	No	No	No	No	No	No	No	No	No	No	No
Sam Farmer	No	No	No	No	No	No	No	No	No	No	No
Peggy Farmer (\$5 Pending)	No	No	No	No	No	No	No	No	No	No	No
David Neiman (No Service)	No	No	No	No	No	No	No	No	No	No	No
Recyclon Corporation	No	No	No	No	No	No	No	No	No	No	No
Resource Recovery & Refining	No	No	No	No	No	No	No	No	No	No	No
Solvents Recovery Corporation	No	No	No	No	No	No	No	No	No	No	No
Rodney F. Wilson (No Service)	No	No	No	No	No	No	No	No	No	No	No
SUBTOTAL	0	0	0	0	0	0	0	1	0	0	0
Group #4 - Generators/Transporters											
Albert Equipment Company	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes
Burlington Northern Railroad	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
(f/k/a Frisco Railroad)	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
URE Company (f/k/a Unit Rig & Equipment Company)	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Capital City Oil Co., Inc./Marvin	No	No	No	No	No	Yes	Yes	Yes	Yes	Yes	Yes
Spees/Glenn Spees/Frank Smith	No	No	No	No	No	No	Yes	Yes	Yes	Yes	Yes
Container Products, Inc.	No	No	No	No	No	No	Yes	Yes	Yes	No	Yes
Easley, Bobby and Marvin	No	No	No	No	No	Yes	Yes	No	No	No	Yes

DEFENDANTS WHICH HAVE PAID ASSESSMENTS #1, 2, 3, 4, 5, 6, 7, 8, 9 AND 10
AND SHOULD PAY ASSESSMENT #11

	I. Ass. #1	II. Ass. #2	III. Ass. #3	IV. Ass. #4	V. Ass. #5	VI. Ass. #6	VII. Ass. #7	VIII. Ass. #8	IX. Ass. #9	X. Ass. #10	XI. Ass. #11
Group #4 - Generators/Transporters (Continued)											
Eason & Smith Enterprises, Inc.	No	No	No	No	No	Yes	Yes	No *	No *	No	No
Kerr, Breene M. and W.E. Howell	No	No	No	No	No	No	No	No	No	Yes	No
(Ellex Trucking/Hugh Breeding)	No	No	No	No	No	Yes	Yes	Yes	Yes	Yes	Yes
Fred Jones Ford of Oklahoma City	No	No	No	No	No	Yes	Yes	Yes	Yes	Yes	Yes
Fred Jones Ford of Tulsa	No	No	No	No	No	Yes	Yes	Yes	Yes	No *	Yes
J.A. Riggs Tractor Company	No	No	No	No	No	Yes	Yes	Yes	Yes	No *	Yes
James Miller	No	No	No	No	No	Yes	Yes	Yes	Yes	Yes	Yes
Moline Paint Manufacturing Company	No	No	No	No	No	Yes	Yes	Yes	Yes	Yes	Yes
Ponca Barrel & Drum/Raymond Kiser/	No	No	No	No	No	Yes	Yes	Yes	Yes	Yes	Yes
Ponca Drum Recycling	No	No	No	No	No	No	Yes	Yes	Yes	No *	Yes
Shannon Drum Service, Inc./	No	No	No	No	No	No	Yes	Yes	No	No *	Yes
Norton Shannon	No	No	No	No	No	No	Yes	Yes	No	No	Yes
Production Manufacturing Co., Inc.	No	No	No	No	No	No	Yes	Yes	No *	No *	No
Tulsa Screw Products/	No	No	No	No	No	Yes	Yes	Yes	Yes	Yes	Yes
United Industries	No	No	No	No	No	Yes	Yes	Yes	Yes	Yes	Yes
Western Company of North	No	No	No	No	No	Yes	Yes	Yes	Yes	Yes	Yes
America, Inc.	No	No	No	No	No	Yes	Yes	Yes	Yes	Yes	Yes
Davis, Frank (Muskogee	No	No	No	No	No	No	No	No	No	No	No
Ford-Lincoln-Mercury)	No	No	No	No	No	No	No	No	No	No	No
McPherson Fuels & Asphalt, and	No	No	No	No	No	No	No	No	No	No	No
John and Sally Neas, Ind.	No	No	No	No	No	No	No	No	No	No	No
The Religion Company	Yes	Yes	Yes	Yes	Yes	No	No	No	No	No	No
Chemical Express Company	Yes	Yes	Yes	Yes	Yes	No	No	No	No	No	No
Chevron Industries, Inc. (Gulf)	Yes	Yes	Yes	Yes	Yes	No	No	No	No	No	No
Chrysler Corporation	No	No	No	No	No	No	No	No	No	No	No
Concrete Industries of Tulsa Corp.	No	No	No	No	No	No	No	No	No	No	No

DEPENDANTS WHICH HAVE PAID ASSESSMENTS #1, 2, 3, 4, 5, 6, 7, 8, 9 AND 10
AND SHOULD PAY ASSESSMENT #11

	I. Ass. #1	II. Ass. #2	III. Ass. #3	IV. Ass. #4	V. Ass. #5	VI. Ass. #6	VII. Ass. #7	VIII. Ass. #8	IX. Ass. #9	X. Ass. #10	XI. Ass. #11
Group #4 - Generators/Transporters (Continued)											
Deere & Company	No	No	No	No	No	Yes	No	No	No	No	No
Doenges Brothers Ford, Inc.	No	No	No	No	No	No	No	No	No	No	No
Ellsworth Motor Freight Lines	No	No	No	No	No	No	No	No	No	No	No
Farmland Industries, Inc.	Yes	Yes	Yes	Yes	Yes	No	No	No	No	No	No
Ford Motor Company	Yes	Yes	Yes	Yes	Yes	No	No	No	No	No	No
General Motors Corporation	No	No	No	No	No	Yes	No	No	No	No	No
Geosource, Inc./Halliburton Serv.	No	No	No	No	No	No	No	No	No	No	No
Hamilton Trucking Co. of Okla. Inc.	Yes	Yes	Yes	Yes	Yes	No	No	No	No	No	No
Peterson Industries, Inc.	No	No	No	No	No	No	No	No	No	No	No
Peterson, Ray (Gulf Station)	No	No	No	No	No	No	No	No	No	No	No
Howard Chevrolet, Inc./	No	No	No	No	No	No	No	No	No	No	No
Howard Sosemon, Individually	No	No	No	No	No	Yes	No	No	No	No	No
Stang Hydraulics/Enterprises	No	No	No	No	No	No	No	No	No	No	No
Sun Refining and Marketing Company	Yes	Yes	Yes	Yes	Yes	No	No	No	No	No	No
Sutterfield, Roger and Carl	No	No	No	No	No	No	No	No	No	No	No
Swinson Chevrolet, Inc.	No	No	No	No	No	No	No	No	No	No	No
Texaco, Inc./Skelly Oil, Inc.	Yes	Yes	Yes	Yes	Yes	No	No	No	No	No	No
Tulsa County (Garages)	No	No	No	No	No	No	No	No	No	No	No
Union Pacific Resources Company	No	No	No	No	No	No	No	No	No	No	No
Wat Henry, Inc.	No	No	No	No	No	No	No	No	No	No	No
Crane Co.	No	No	No	No	No	No	No	No	No	No	No
Power Assist Co., Inc.	Yes	Yes	Yes	Yes	Yes	No	No	No	No	No	No
Rheem Manufacturing Company	Yes	Yes	Yes	Yes	Yes	No	No	No	No	No	No
T.I.M.E. - DC, Inc.	Yes	Yes	Yes	Yes	Yes	No	No	No	No	No	No
W.R. Stubbs Trucking	Yes	Yes	Yes	Yes	Yes	No	No	No	No	No	No
Piping Engineering Company	Yes	Yes	Yes	Yes	Yes	No	No	No	No	No	No
Bill White GMC Trucks, Inc.	No	No	No	No	No	Yes	Yes	Yes	No	No	No
Carner, Oba (Premier Pontiac)	No	No	No	No	No	Yes	Yes	Yes	No	No	No

DEFENDANTS WHICH HAVE PAID ASSESSMENTS #1, 2, 3, 4, 5, 6, 7, 8, 9 AND 10
AND SHOULD PAY ASSESSMENT #11

I.	II.	III.	IV.	V.	VI.	VII.	VIII.	IX.	X.	XI.
Ass. #1	Ass. #2	Ass. #3	Ass. #4	Ass. #5	Ass. #6	Ass. #7	Ass. #8	Ass. #9	Ass. #10	Ass. #11

Group #4 - Generators/Transporters (Continued)

Cecil Lawson Buick-Cadillac, Inc.	No	No	No	No	No	Yes	Yes	No	No	No
and Cecil Lawson, Individually	No	No	No	No	No	Yes	Yes	No	No	No
Cox Motors Company	No	No	No	No	No	Yes	Yes	No	No	No
Crager, Howard (Crager GMC Trucks)	No	No	No	No	No	Yes	Yes	No	No	No
Dean Bailey Olds, Inc.	No	No	No	No	No	Yes	Yes	No	No	No
Don Thornton Ford, Inc.	No	No	No	No	No	Yes	Yes	No	No	No
Jim Norton Buick, Inc.	No	No	No	No	No	Yes	Yes	No	No	No
Milo Gordon Chrysler-Plymouth, Inc.	No	No	No	No	No	Yes	Yes	No	No	No
Nassif Buick Co. and A.J. Nassif	No	No	No	No	No	Yes	Yes	No	No	No
Northcutt Chevrolet	No	No	No	No	No	Yes	Yes	No	No	No
Oklahoma State University/Okmulgee	No	No	No	No	No	Yes	Yes	No	No	No
Siegfried Grimm	No	No	No	No	No	No *	No *	No	No	No
Sober Brothers, Inc.	No	No	No	No	No	Yes	Yes	No	No	No
Spraker Volkswagen	No	No	No	No	No	Yes	Yes	No	No	No
Stitch, Roger (Aamco Franchise)	No	No	No	No	No	Yes	Yes	No	No	No
Ballentine Produce	No	No	No	No	No	Yes	Yes	No	No	No
Ready, Charlene and Samuel	No	No	No	No	No	No	No	No	No	No
Rudder, Doris/Dan Rudder Motor Co.	No	No	No	No	No	No	No	No	No	No
Diesel Service, Inc.	No	No	No	No	No	No	No	No	No	No
Harper, Odell (Tulsa Diesel Serv.)	No	No	No	No	No	No	No	No	No	No
Henderson, C.W.	No	No	No	No	No	No	No	No	No	No
Jenkins, A.W. (Tuloma Rigging Co.)	No	No	No	No	No	No	No	No	No	No
McClanahan, Max (Westside Diesel)	No	No	No	No	No	No	No	No	No	No
Morton, John A. (Tulsa Truck Term.)	No	No	No	No	No	No	No	No	No	No
Production Manufacturing Company/	No	No	No	No	No	No	No	No	No	No
Larry Patterson, Indiv.	No	No	No	No	No	No	No	No	No	No
Regency Oldsmobile, Inc.	No	No	No	No	No	No	No	No	No	No
Toyota of Tulsa, Inc.	No	No	No	No	No	No	No	No	No	No

DEFENDANTS WHICH HAVE PAID ASSESSMENTS #1, 2, 3, 4, 5, 6, 7, 8, 9 AND 10
AND SHOULD PAY ASSESSMENT #11

	I. Ass. #1	II. Ass. #2	III. Ass. #3	IV. Ass. #4	V. Ass. #5	VI. Ass. #6	VII. Ass. #7	VIII. Ass. #8	IX. Ass. #9	X. Ass. #10	XI. Ass. #11
<u>Group #4 - Generators/Transporters (Continued)</u>											
Beal, Jack Jr. (Jack Beal Trucking)	No	No	No	No	No	No	No	No	No	No	No
Bill Hodges Trucking	No	No	No	No	No	No	No	No	No	No	No
Consolidated Cleaning Service Co./											
James Wade Farnan, Indiv.	No	No	No	No	No	No	No	No	No	No	No
Gilbert, Edgar	No	No	No	No	No	No	No	No	No	No	No
Groover, Paul (Sunoco Station)	No	No	No	No	No	No	No	No	No	No	No
Hays, Sam W. Jr. (Star Auto)	No	No	No	No	No	No	No	No	No	No	No
Joseph F. Burke, Inc.	No	No	No	No	No	No	No	No	No	No	No
Kenworth of Arkansas, Inc.	No	No	No	No	No	No	No	No	No	No	No
Madewell Metals	No	No	No	No	No	No	No	No	No	No	No
Powell Sanitation, Inc.	No	No	No	No	No	No	No	No	No	No	No
Ready, Ronnie (Ready Tank Company)	No	No	No	No	No	No	No	No	No	No	No
Shipley Motor Equipment Company	No	No	No	No	No	No	No	No	No	No	No
Street, Leroy (Oreona Corporation)	No	No	No	No	No	No	No	No	No	No	No
T. Lee Company, Inc.	No	No	No	No	No	No	No	No	No	No	No
Tri-Container, Inc./	No	No	No	No	No	No	No	No	No	No	No
Judson Webb, Individually	No	No	No	No	No	No	No	No	No	No	No
<u>No Service/Mail Returned</u>											
AAHCO Transmissions, Inc.	No	No	No	No	No	No	No	No	No	No	No
Great Lakes Container Corporation	No	No	No	No	No	No	No	No	No	No	No
Fina, Inc.	No	No	No	No	No	No	No	No	No	No	No
Muskogee Ford-Lincoln-Mercury	No	No	No	No	No	No	No	No	No	No	No
Nissan Trading Corporation	No	No	No	No	No	No	No	No	No	No	No
Oreona Corporation	No	No	No	No	No	No	No	No	No	No	No
Total Petroleum, Inc. (APCO)	No	No	No	No	No	No	No	No	No	No	No
Toyota Motor Sales, USA, Inc.	No	No	No	No	No	No	No	No	No	No	No
Union Oil Company of Cal. (UNOCAL)	No	No	No	No	No	No	No	No	No	No	No

DEFENDANTS WHICH HAVE PAID ASSESSMENTS #1, 2, 3, 4, 5, 6, 7, 8, 9 AND 10
AND SHOULD PAY ASSESSMENT #11

	I. Ass. #1	II. Ass. #2	III. Ass. #3	IV. Ass. #4	V. Ass. #5	VI. Ass. #6	VII. Ass. #7	VIII. Ass. #8	IX. Ass. #9	X. Ass. #10	XI. Ass. #11
No Service/Mail Returned (Continued)											
White GMC Trucks of Houston, Inc.	No	No	No	No	No	No	No	No	No	No	No
Inman, Thomas Wayne Sr. (Inman Trucking)	No	No	No	No	No	No	No	No	No	No	No
McClanahan, J. Michael (Westside Diesel Service)	No	No	No	No	No	No	No	No	No	No	No
Muskogee Ford Tractor, and Robert E. Kershaw, Sr., Indiv.	No	No	No	No	No	No	No	No	No	No	No
SUBTOTAL	16	15	15	15	15	32	31	29	12	16	15
Group #5 - USA											
United States of America	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
SUBTOTAL	1	1	1	1	1	1	1	1	1	1	1
TOTAL OF ALL GROUPS	55	45	44	44	44	50	56	57	34	38	35

KEY:

- * These Defendants were ordered to pay Assessments 6, 7, 8, 9 or 10, as the case may be, but have not done so as of October 19, 1993.
- ** These Defendants were ordered to pay Assessments 6 or 7, as the case may be, but have not done so due to default judgments or poverty claims. For the same reasons, these Defendants are not designated to pay Assessments #8, #9, #10 and #11.

ENTERED ON DOCKET
NOV 16 1993
DATE NOV 16 1993

FILED

NOV 15 1993

Richard M. Lawrence, Clerk
U.S. District Court
Northern District of Oklahoma

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

ATLANTIC RICHFIELD COMPANY,)
)
Plaintiff,)
)
v.)
)
AMERICAN AIRLINES, INC., ET AL.)
)
Defendants.)
_____)

Consolidated Case Nos.

89-C-868-B ✓

89-C-869-B

90-C-859-B

ORDER FOR DISMISSAL WITHOUT PREJUDICE

Now on this 15 day of November, 1993, upon presentation of the Motion for Dismissal Without Prejudice of Plaintiff Atlantic Richfield Company, the Court finds and adjudges that all claims of Atlantic Richfield Company set forth herein against Defendants Manzo Miller, Bill Hodges Trucking Company, Inc., Marvin Easley, and Bobby Easley should be and are hereby dismissed without prejudice to any future action upon such claims and that each of these parties shall bear and be responsible for its own costs and expenses incurred herein.


Judge

ENTERED ON DOCKET
NOV 16 1993

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

ATLANTIC RICHFIELD COMPANY,
Plaintiff,
v.
AMERICAN AIRLINES, INC., ET AL.
Defendants.

Consolidated Case Nos.

89-C-868-B
89-C-869-B
90-C-859-B

FILED

NOV 15 1993

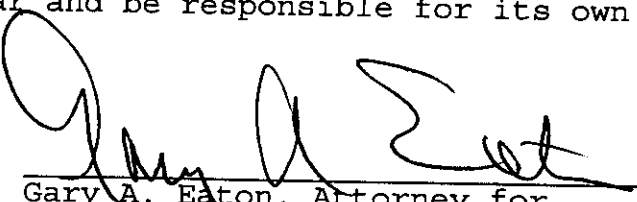
Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

STIPULATION FOR DISMISSAL WITHOUT PREJUDICE

The Plaintiff Atlantic Richfield Company and Defendants Norton Shannon and Shannon Drum Service, Inc. ("the "Shannon Entities"), jointly agree, state, and stipulate as follows:

1. Atlantic Richfield Company and the Shannon Entities jointly waive hearing and notice of hearing of this Stipulation of Dismissal without Prejudice.
2. Atlantic Richfield Company and the Shannon Entities stipulate and move the Court to allow Atlantic Richfield Company to dismiss all claims set forth herein against the Shannon Entities without prejudice to any future action upon such claims.
3. Atlantic Richfield Company and the Shannon Entities stipulate that each shall bear and be responsible for its own costs and expenses incurred herein.

Dated: _____


Gary A. Eaton, Attorney for
Atlantic Richfield Company

Dated: Nov. 15, 1993


James L. Hargrove
Attorney for Norton Shannon and
Shannon Drum Service, Inc.

NOV 16 1993

FILED
NOV 15 1993
Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

ATLANTIC RICHFIELD COMPANY,)
)
Plaintiff,)
)
v.)
)
AMERICAN AIRLINES, INC., ET AL.)
)
Defendants.)


Consolidated Case Nos.
89-C-868-B
89-C-869-B
90-C-859-B

STIPULATION FOR DISMISSAL WITHOUT PREJUDICE

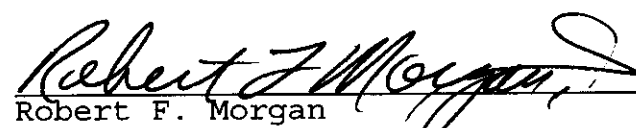
The Plaintiff Atlantic Richfield Company and Defendants Raymond E. Kizer, Ponca Drum Recycling, Inc. and Ponca Barrel and Drum, Inc. (the "Ponca Entities"), jointly agree, state, and stipulate as follows:

1. Atlantic Richfield Company and the Ponca Entities jointly waive hearing and notice of hearing of this Stipulation of Dismissal without Prejudice.
2. Atlantic Richfield Company and the Ponca Entities stipulate and move the Court to allow Atlantic Richfield Company to dismiss all claims set forth herein against the Ponca Entities without prejudice to any future action upon such claims.
3. Atlantic Richfield Company and the Ponca Entities stipulate that each shall bear and be responsible for its own costs and expenses incurred herein.

Dated: _____


Gary A. Eaton, Attorney for
Atlantic Richfield Company

Dated: 11/15/93


Robert F. Morgan
Attorney for Raymond E. Kizer,
Ponca Drum Recycling, Inc. and
Ponca Barrel and Drum, Inc.

DATE NOV 16 1993

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

NOV 15 1993

BILL E. DOWELL and)
LINDA A. DOWELL,)
)
Plaintiffs,)
)
vs.)
)
FARMERS INSURANCE COMPANY, INC.,)
)
Defendant.)

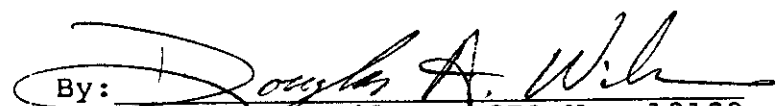
Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

Case No. 93-C-497-B

PLAINTIFFS' DISMISSAL OF BAD FAITH CLAIM

COME NOW the Plaintiffs, BILL E. DOWELL and LINDA A. DOWELL,
pursuant to agreement between the parties, and hereby dismiss
their allegations of bad faith against the Defendant.

RIGGS, ABNEY, NEAL & TURPEN

By: 
Douglas A. Wilson, OBA No. 13128
502 West Sixth Street
Tulsa, OK 74119-1010
(918) 587-3161

ATTORNEYS FOR PLAINTIFFS

Defendant Farmers Insurance Company, Inc., agrees to
stipulate to the dismissal of Plaintiffs' bad faith claims
against Defendant.


Dennis D. King, Esq.
KNOWLES, KING & SMITH
603 Expressway Tower
2431 East 51 Street
Tulsa, OK 74105
(918) 749-5566

DATE NOV 16 1993

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

MELVIN EDWARDS,
Plaintiff,

vs.

STANLEY GLANZ, et al,
Defendants.

No. 93-C-444-B

FILED

NOV 16 1993

**Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA**

ORDER

Before the Court is Defendants' motion to dismiss, and alternatively for summary judgment filed on September 1, 1993. Plaintiff has not responded.

Plaintiff's failure to respond to Defendants' motion constitutes a waiver of objection to the motion, and a confession of the matters raised by the motion. See Local Rule 15(A).

ACCORDINGLY, IT IS HEREBY ORDERED that:

- (1) Defendants' motion to dismiss and alternatively for summary judgment [docket #11] is **granted** and the above captioned case is **dismissed without prejudice** at this time.
- (2) The Court may reopen this case if Plaintiff submits a response to Defendants' motion to dismiss, and alternatively for summary judgment no later than twenty (20) days from the date of entry of this order.

SO ORDERED THIS 15th day of Nov., 1993.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET
DATE NOV 16 1993

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

ROBERT E JONES, JR.,
Plaintiff,
vs.
STANLEY L. SWAGERTY,
Defendant.

FILED

NOV 16 1993

93
No. 92-C-294-B

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER

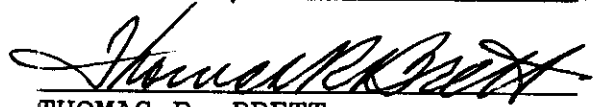
In April 1993, Plaintiff filed the above captioned civil rights action and moved for injunctive relief. On July 7, 1993, Defendant moved for summary judgment. Plaintiff has not responded.

Plaintiff's failure to respond to Defendant's motion constitutes a waiver of objection to the motion, and a confession of the matters raised by the motion. See Local Rule 15(A).

ACCORDINGLY, IT IS HEREBY ORDERED that:

- (1) Defendant's motion for summary judgment [docket #8] is granted and the above captioned case is dismissed without prejudice.
- (2) Plaintiff's motion for injunctive relief [docket #3] is denied.

SO ORDERED THIS 15th day of Nov., 1993.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET
DATE NOV 16 1993

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

NOV 16 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

IVAN THOMAS EASILEY,

Plaintiff,

vs.

RON CHAMPION, et al,

Defendants.

No. 93-C-417-B

ORDER

Before the Court is Defendants' motion to dismiss filed on July 26, 1993. Plaintiff has not responded.

Plaintiff's failure to respond to Defendants' motion constitutes a waiver of objection to the motion, and a confession of the matters raised by the motion. See Local Rule 15(A).

ACCORDINGLY, IT IS HEREBY ORDERED that:

- (1) Defendants' motion to dismiss [docket #4] is **granted** and the above captioned case is **dismissed without prejudice**.

SO ORDERED THIS 15 day of Nov., 1993.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET
DATE NOV 16 1993

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

TOMMY G. MERRITT,
Plaintiff,
vs.
RON CHAMPION, et al,
Defendants.

No. 93-C-357-B

FILED

NOV 16 1993

**Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA**

ORDER

Before the Court is Defendants' motion to dismiss or in the alternative for summary judgment filed on July 19, 1993. Plaintiff has not responded.

Plaintiff's failure to respond to Defendants' motion constitutes a waiver of objection to the motion, and a confession of the matters raised by the motion. See Local Rule 15(A).

ACCORDINGLY, IT IS HEREBY ORDERED that:

(1) Defendants' motion to dismiss [docket #4] is **granted** and the above captioned case is **dismissed without prejudice**.

SO ORDERED THIS 15 day of Nov., 1993.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET
DATE NOV 16 1993

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

KENNETH JOHNSTONE,
Plaintiff,

vs.

LARRY FIELDS,
Defendants.

No. 93-C-364-B

FILED

NOV 16 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER

Before the Court is Defendants' motion to dismiss filed on July 15, 1993. Plaintiff has not responded.

Plaintiff's failure to respond to Defendants' motion constitutes a waiver of objection to the motion, and a confession of the matters raised by the motion. See Local Rule 15(A).

ACCORDINGLY, IT IS HEREBY ORDERED that:

(1) Defendants' motion to dismiss [docket #4] is **granted** and the above captioned case is **dismissed without prejudice**.

SO ORDERED THIS 15 day of Nov., 1993.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

DATE NOV 16 1993

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

TORIANO L. CHANDLER,

Plaintiff,

vs.

RON CHAMPION, et al,

Defendants.

No. 93-C-506-B

FILED

NOV 16 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER

Before the Court is Defendants' motion to dismiss filed on September 7, 1993. Plaintiff has not responded.

Plaintiff's failure to respond to Defendants' motion constitutes a waiver of objection to the motion, and a confession of the matters raised by the motion. See Local Rule 15(A).

ACCORDINGLY, IT IS HEREBY ORDERED that:

- (1) Defendants' motion to dismiss [docket #4] is granted and the above captioned case is dismissed without prejudice at this time.

SO ORDERED THIS 15 day of Nov., 1993.

Thomas R. Gentry

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF OKLAHOMA

CLERK'S OFFICE

UNITED STATES COURT HOUSE

333 West Fourth Street, Room 411

TULSA, OKLAHOMA 74103-3881

NOV 12 1993

RICHARD M. LAWRENCE
CLERK

(918) 581-7796
(FTS) 745-7796

November 12, 1993

TO: Counsel/Parties of Record

RE: Case No. 92-C-985-C Buchanan v. Sherrill

This is to advise you that Judge H. Dale Cook entered the following Minute Order this date in the above case:

Good cause having not been shown, pursuant to Rule 4(j) F.R.Cv.P. defendants Penny Sherrill, Mike Gorham and Trey Gillette are hereby dismissed.

Very truly yours,

RICHARD M. LAWRENCE, CLERK

By: 

Deputy Clerk

ENTERED ON DOCKET

DATE 11-15-93

FILED

NOV 12 1993

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

ROOSEVELT YOUNG,

Plaintiff,

v.

MANAGEMENT & TRAINING
CORPORATION, d/b/a Tulsa
Job Corps Center,

Defendant.

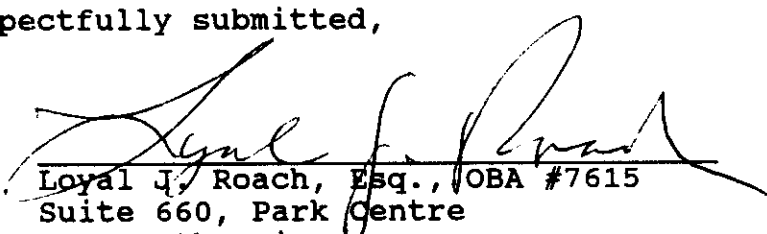
Case No. 93-C-596-E

**STIPULATION OF
DISMISSAL WITH PREJUDICE**

The parties agree that the claims, being those of Roosevelt Young against Management & Training Corporation d/b/a Tulsa Job Corps Center, shall be dismissed with prejudice, with each party to bear its own costs and attorney fees.

Respectfully submitted,


By:


Loyal J. Roach, Esq., OBA #7615
Suite 660, Park Centre
525 South Main
Tulsa, OK 74103
(918) 587-2544

ATTORNEY FOR PLAINTIFF ROOSEVELT YOUNG

NICHOLS, WOLFE, STAMPER, NALLY
& FALLIS, INC.

By:


Angelyn L. Dale, OBA #10773
NICHOLS, WOLFE, STAMPER, NALLY
& FALLIS, INC.
Suite 400, Old City Hall Building
124 East Fourth Street
Tulsa, Oklahoma 74103-5010

ATTORNEY FOR DEFENDANT MANAGEMENT &
TRAINING CORPORATION

ENTERED ON DOCKET

DATE 11-15-93

FILED

NOV 12 1993

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

EMMA L. RUSSELL,

Plaintiff,

v.

Case No. 93-C-374-E

MANAGEMENT & TRAINING
CORPORATION, d/b/a
Tulsa Job Corps Center,

Defendant.

**STIPULATION OF
DISMISSAL WITH PREJUDICE**

The parties agree that the claims, being those of Emma L. Russell against Management & Training Corporation d/b/a Tulsa Job Corps Center, shall be dismissed with prejudice, with each party to bear its own costs and attorney fees.

Respectfully submitted,

By: 

Loyal J. Roach, Esq., OBA #7615
Suite 660, Park Centre
525 South Main
Tulsa, OK 74103
(918) 587-2544

ATTORNEY FOR PLAINTIFF EMMA L. RUSSELL

NICHOLS, WOLFE, STAMPER, NALLY
& FALLIS, INC.

By: 

Angelyn L. Dale, OBA #10773
NICHOLS, WOLFE, STAMPER, NALLY
& FALLIS, INC.
Suite 400, Old City Hall Building
124 East Fourth Street
Tulsa, Oklahoma 74103-5010

ATTORNEY FOR DEFENDANT MANAGEMENT &
TRAINING CORPORATION

ENTERED ON DOCKET

DATE 11-15-93

**UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

**SCOTT E. THOMAS, JAMES R.
GOTWALS,**

Defendants.

FILED

NOV 12 1993

**Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA**

) CIVIL ACTION NO. 93-C-718-E

ORDER

This matter comes on before the court upon the Stipulation of the parties and the court being fully advised in the premises **ORDERS, ADJUDGES AND DECREES** that all claims against James R. Gotwals are hereby dismissed with prejudice, the parties to bear their own costs and attorneys' fees.

DATED THIS 12 day of November, 1993.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

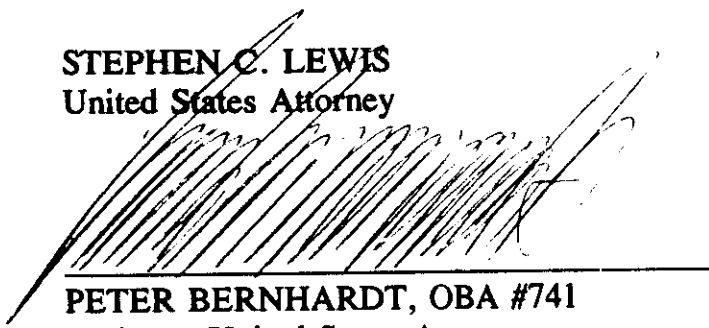
**UNITED STATES V. SCOTT E. THOMAS
CIVIL ACTION NO. 93-C-718-E**

APPROVED AS TO FORM AND CONTENT:



DONALD E. POOL, OBA #7210
1515 South Denver Avenue
Tulsa, OK 74119-3839
Attorney for Defendant Gotwals

STEPHEN C. LEWIS
United States Attorney



PETER BERNHARDT, OBA #741
Assistant United States Attorney
3460 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

DATE 11-15-93

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

NOV 12 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

DAVID CHARLES BEATTIE,

Plaintiff,

v.

AUTOMOBILES OF ITALY, INC.,
d/b/a JOE MARINE HONDA;

and

TERRY KOZKUSKI,

Defendants.

Case No. 93-C-740E

ORDER OF DISMISSAL WITH PREJUDICE

THIS matter comes on for hearing this 12 day of November, 1993 upon the Motion of the plaintiff for an Order of Dismissal of plaintiff's Petition, With Prejudice.

There being no objection by the defendants, the Court sustains plaintiff's Motion. This cause is hereby dismissed with prejudice to it ever being brought by this plaintiff again.

IT IS SO ORDERED.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

AGREED:

BREWSTER SHALLCROSS & De ANGELIS

By

R A S
Richard A. Shallcross - OBA #10016
2021 S. Lewis Ave., Suite 675
Tulsa, OK 74104
(918) 742-2021

Attorneys for Plaintiff,
David Charles Beattie

RHODES, HIERONYMUS, JONES, TUCKER & GABLE

By

Wilson White

Wilson White - OBA #13611

15 W. 6th, Suite 2800

Tulsa, OK 74119

(918) 582-1173

Attorneys for Defendants, Automobiles of
Italy, Inc. and Terry Kozkuski

United States District Court
for Northern District of Oklahoma
November 15, 1993

Gene C Howard, Esq.
Howard & Widdows
2021 S Lewis
Suite 470
Tulsa, OK 74104

C I V I L M I N U T E S

4:91-cv-00621

RTC v. Cherry Hills Assoc

DOCKET ENTRY

MINUTE ORDER: Case transferred to Dist of: Western
Oklahoma and assigned to Judge Robin Cauthron for further
proceedings herein (cc: all counsel)

Hon. Thomas R. Brett, Judge
Chief Judge James O Ellison

THIS NOTICE SENT TO ALL COUNSEL

Marked
11-16-93

ENTERED ON DOCKET

DATE 11-12-93

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

PETRO-CHEM DEVELOPMENT
CO., INC. d/b/a/ AMERICAN
ECONO-THERM, a Delaware
Corporation,

Plaintiff,

-vs-

STEWART & STEVENSON
SERVICES, INC., a Texas
Corporation

Defendant.

Case No. 93-C-527 E

FILED

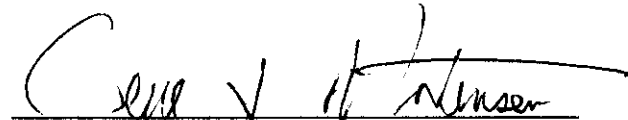
NOV 12 1993

Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

DISMISSAL WITH PREJUDICE

The plaintiff, Petro-Chem Development Co., Inc. a Delaware Corporation, d/b/a American Econo-Therm, dismisses the captioned cause of action with prejudice to the right to ever file the same claims again.

Rosenstein, Fist & Ringold

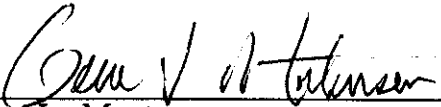


Gene L. Mortensen
OBA # 6452
525 South Main Mall
Tulsa, Oklahoma 74103-4520
(918) 585-9211

CERTIFICATE OF SERVICE

A copy of the foregoing Dismissal with Prejudice was served upon the following individual on November 12th 1993, by the U. S. mail, with postage prepaid:

Glenn W. Patterson, Jr., Esquire
Eleven Greenway Plaza
Summit Tower - Suite 2820
Houston, Texas 77046
Attorney for Stewart & Stevenson Services, Inc.



Gene L. Mortensen

ENTERED ON DOCKET

DATE 11-12-93

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

THANH HUU NGUYEN,
Petitioner,

vs.

RON CHAMPION, et al.,
Respondent.

No. 93-C-236-E

FILED

NOV 10 1993

ORDER

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

Before the court is Petitioner's motion to alter or amend judgment pursuant to Fed. R. Civ. P. 59(e).

On May 5, 1993, this Court dismissed the above captioned case without prejudice for failing to submit the proper filing fee or a motion for leave to proceed in forma pauperis. The Court also noted that Petitioner's action would more appropriately be brought in the United States District Court for the Eastern District of Oklahoma. On May 12, 1993, Petitioner filed the instant motion, asserting that he had paid the proper filing fee and that he chose to file this petition in the district court in which he was incarcerated.


ACCORDINGLY, IT IS HEREBY ORDERED that:

- (1) Petitioner's motion to alter or amend judgment [docket #3] is **granted**.
- (2) The Clerk shall **reopen** Petitioner's action.
- (3) Petitioner's application for a writ of habeas corpus is **transferred** in furtherance of justice to the Eastern

District of Oklahoma for all further proceedings. See 28

U.S.C. § 2241(d).

IT IS SO ORDERED this 10th day of November, 1993.


JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

ENTERED ON DOCKET

DATE 11-12-93

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

WILLIAM CARTER,

Plaintiff,

vs.

RON CHAMPION

Defendants.

No. 92-C-1161-E ✓

FILED

NOV 10 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER


Before the Court is Defendants' motion to dismiss filed on May 24, 1993. Plaintiff has not responded.

Plaintiff's failure to respond to Defendants' motion constitutes a waiver of objection to the motion, and a confession of the matters raised by the motion. See Local Rule 15(A).

ACCORDINGLY, IT IS HEREBY ORDERED that:

- (1) Defendants' motion to dismiss [docket #5] is **granted** and the above captioned case is **dismissed without prejudice** at this time.

SO ORDERED THIS 10th day of November, 1993.


JAMES O. ELLISON, CHIEF JUDGE
UNITED STATES DISTRICT COURT

ENTERED ON DOCKET

DATE 11-12-93

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

KERRY PRESTON HERNDON,

Plaintiff,

vs.

LARRY FIELDS, et al,

Defendants.

No. 93-C-204-E

FILED

NOV 10 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER


Before the Court is Defendants' motion to dismiss filed on June 21, 1993. Plaintiff has not responded.

Plaintiff's failure to respond to Defendants' motion constitutes a waiver of objection to the motion, and a confession of the matters raised by the motion. See Local Rule 15(A).

ACCORDINGLY, IT IS HEREBY ORDERED that:

- (1) Defendants' motion to dismiss [docket #8] is **granted** and the above captioned case is **dismissed without prejudice** at this time.

SO ORDERED THIS 10th day of November, 1993.


JAMES O. ELLISON, CHIEF JUDGE
UNITED STATES DISTRICT COURT

ENTERED ON DOCKET

DATE 11-12-93

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

OPIE D. PITTS,

Plaintiff,

vs.

LARRY FIELDS

Defendants.

No. 93-C-149-E

FILED

NOV 10 1993

Richard M. Lawler, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER


Before the Court is Defendants' motion to dismiss filed on June 10, 1993. Plaintiff has not responded.

Plaintiff's failure to respond to Defendants' motion constitutes a waiver of objection to the motion, and a confession of the matters raised by the motion. See Local Rule 15(A).

ACCORDINGLY, IT IS HEREBY ORDERED that:

- (1) Defendants' motion to dismiss [docket #7] is **granted** and the above captioned case is **dismissed without prejudice** at this time.

SO ORDERED THIS 10th day of November, 1993.


JAMES C. ELLISON, CHIEF JUDGE
UNITED STATES DISTRICT COURT

ENTERED ON DOCKET

DATE 11-12-93

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

ROY DALE CHEATHAM,

Plaintiff,

vs.

LARRY FIELDS, et al,

Defendants.

No. 93-C-161-E ✓

FILED

NOV 10 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER


Before the Court is Defendants' motion to dismiss filed on May 17, 1993. Plaintiff has not responded.

Plaintiff's failure to respond to Defendants' motion constitutes a waiver of objection to the motion, and a confession of the matters raised by the motion. See Local Rule 15(A).

ACCORDINGLY, IT IS HEREBY ORDERED that:

- (1) Defendants' motion to dismiss [docket #4] is **granted** and the above captioned case is **dismissed without prejudice**.

SO ORDERED THIS 10th day of November, 1993.


JAMES O. ELLISON, CHIEF JUDGE
UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES H. GARDNER a/k/a JAMES
HARVEY GARDNER; CINDY BATES
a/k/a CINDY BATES BARRETT;
STACEY ABBITT a/k/a STACEY
LEIGH ABBITT; INDIANA
LUMBERMENS MUTUAL INSURANCE
COMPANY; RONALD W. NUNNELEY
d/b/a NUNNELEY BAIL BONDS;
FIRST SECURITY MORTGAGE
COMPANY; THOMAS H. GALCATCHER;
PATSY GALCATCHER; COUNTY
TREASURER, Rogers County,
Oklahoma; BOARD OF COUNTY
COMMISSIONERS, Rogers County,
Oklahoma; and ANGELA IRENE
HERRICK, a minor child by and
through, EDNA LOUISE HOLCOMB,
her mother and best friend,

Defendants.) CIVIL ACTION NO. 92-C-097-B ✓

FILED
NOV 5 - 1993
Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 5th day
of Nov., 1993. The Plaintiff appears by F. L. Dunn,
III, United States Attorney for the Northern District of
Oklahoma, through Phil Pinnell, Assistant United States Attorney;
the Defendants, County Treasurer, Rogers County, Oklahoma, and
Board of County Commissioners, Rogers County, Oklahoma, appear by
Bill M. Shaw, Assistant District Attorney, Rogers County,
Oklahoma; the Defendant, James H. Gardner a/k/a James Harvey
Gardner, appears by his attorney Gary House; the Defendant,
Indiana Lumbermens Mutual Insurance Company, appears not, having
previously filed its Disclaimer and being dismissed from this

action; the Defendant, Ronald W. Nunneley d/b/a Nunneley Bail Bonds, appears not, having previously filed his Disclaimer; the Defendants, Thomas H. Galcatcher and Patsy Galcatcher, appear not, having previously filed their Disclaimer; the Defendant, Angela Irene Herrick, a minor child by and through, Edna Louise Holcomb, her mother and best friend, appears by her attorney Jack E. Gordon, Jr.; and the Defendants, Cindy Bates a/k/a Cindy Bates Barrett, Stacey Abbitt a/k/a Stacey Leigh Abbitt, and First Security Mortgage Company, appear not, but make default.

The Court being fully advised and having examined the court file finds that the Defendant, Cindy Bates a/k/a Cindy Bates Barrett, was served with Summons and Amended Complaint on September 4, 1992; that the Defendant, Stacey Abbitt a/k/a Stacey Leigh Abbitt, was served with Summons and Amended Complaint on January 15, 1993, by certified mail as shown on the U.S. Marshal's service; that the Defendant, Ronald W. Nunneley d/b/a Nunneley Bail Bonds, acknowledged receipt of Summons and Complaint on February 4, 1992; that Defendant, County Treasurer, Rogers County, Oklahoma, acknowledged receipt of Summons and Complaint on February 5, 1992; and that Defendant, Board of County Commissioners, Rogers County, Oklahoma, acknowledged receipt of Summons and Complaint on February 4, 1992; the Defendant, Angela Irene Herrick, a minor child by and through, Edna Louise Holcomb, her mother and best friend, acknowledged receipt of Summons and Amended Complaint on March 9, 1992.

The Court further finds that the Defendant, First Security Mortgage Company, was served by publishing notice of

this action in the Claremore Daily Progress, a newspaper of general circulation in Rogers County, Oklahoma, once a week for six (6) consecutive weeks beginning February 4, 1993, and continuing through March 11, 1993, as more fully appears from the verified proof of publication duly filed herein; and that this action is one in which service by publication is authorized by 12 O.S. Section 2004(c)(3)(c). Counsel for the Plaintiff does not know and with due diligence cannot ascertain the whereabouts of the Defendant, First Security Mortgage Company, and service cannot be made upon said Defendant within the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, or upon said Defendant without the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, as more fully appears from the evidentiary affidavit of a bonded abstracter filed herein with respect to the last known address of the Defendant, First Security Mortgage Company. The Court conducted an inquiry into the sufficiency of the service by publication to comply with due process of law and based upon the evidence presented together with affidavit and documentary evidence finds that the Plaintiff, United States of America, acting on behalf of the Secretary of Veterans Affairs, and its attorneys, F. L. Dunn, III, United States Attorney for the Northern District of Oklahoma, through Phil Pinnell, Assistant United States Attorney, fully exercised due diligence in ascertaining the true name and identity of the party served by publication with respect to its present or last known place of residence and/or mailing address. The Court accordingly approves

and confirms that the service by publication is sufficient to confer jurisdiction upon this Court to enter the relief sought by the Plaintiff, both as to subject matter and the Defendant served by publication.

It appears that the Defendants, County Treasurer, Rogers County, Oklahoma, and Board of County Commissioners, Rogers County, Oklahoma, filed their Answer on February 7, 1992; that the Defendant, James H. Gardner a/k/a James Harvey Gardner, filed his Answer on April 10, 1992; that the Defendant, Indiana Lumbermens Mutual Insurance Company, filed its Disclaimer on December 21, 1992 and Plaintiff dismissed this Defendant on December 21, 1992; that the Defendant, Ronald W. Nunneley d/b/a Nunneley Bail Bonds, filed his Disclaimer on November 3, 1992; that the Defendants, Thomas H. Galcatcher and Patsy Galcatcher, filed their Disclaimer on February 27, 1992; that the Defendant, Angela Irene Herrick, a minor child by and through, Edna Louise Holcomb, her mother and best friend, filed her Answer on March 10, 1992; and that the Defendants, Cindy Bates a/k/a Cindy Bates Barrett, Stacey Abbitt a/k/a Stacey Leigh Abbitt, and First Security Mortgage Company, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real property located in Rogers County, Oklahoma, within the Northern Judicial District of Oklahoma:

The North 295.16097 feet of the West 295.16097 feet of the NW/4 of NE/4 of NE/4 of Section 28, Township 23 North, Range 17 East of the I.B. & M., according to the U.S. Government Survey thereof, Rogers County, State of Oklahoma.

The Court further finds that on February 20, 1987, James Harvey Gardner executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, his mortgage note in the amount of \$28,500.00, payable in monthly installments, with interest thereon at the rate of nine percent (9%) per annum.

The Court further finds that as security for the payment of the above-described note, James Harvey Gardner executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, a mortgage dated February 20, 1987, covering the above-described property. Said mortgage was recorded on February 23, 1987, in Book 753, Page 41, in the records of Rogers County, Oklahoma.

The Court further finds that the Defendant, James H. Gardner a/k/a James Harvey Gardner, made default under the terms of the aforesaid note and mortgage by reason of his failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendant, James H. Gardner a/k/a James Harvey Gardner, is indebted to the Plaintiff in the principal sum of \$27,734.68, plus interest at the rate of 9 percent per annum from October 1, 1990 until judgment, plus

interest thereafter at the legal rate until fully paid, and the costs of this action in the amount of \$303.65 (\$17.40 fees for service of Summons and Complaint, \$278.25 publication fees, \$8.00 fee for recording Notice of Lis Pendens).

The Court further finds that the Defendant, Angela Irene Herrick, a minor child by and through, Edna Louise Holcomb, her mother and best friend, has a properly perfected judgment lien against the subject real property. Said lien is inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendants, County Treasurer and Board of County Commissioners, Rogers County, Oklahoma, claim no right, title or interest in the subject real property.

The Court further finds that the Defendants, Indiana Lumbermens Mutual Insurance Company, Ronald W. Nunneley d/b/a Nunneley Bail Bonds, Thomas H. Galcatcher and Patsy Galcatcher, disclaim any right, title, and interest in the subject real property, and Defendant, Indiana Lumbermens Mutual Insurance Company was dismissed as a Defendant herein.

The Court further finds that the Defendant, Cindy Bates a/k/a Cindy Bates Barrett, Stacey Abbitt a/k/a Stacey Leigh Abbitt, and First Security Mortgage Company, are in default and have no right, title, or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff, the United States of America, acting on behalf of the Secretary of Veterans Affairs, have and recover judgment against the Defendant, **James H. Gardner a/k/a James Harvey Gardner**, in

the principal sum of \$27,734.68, plus interest at the rate of 9 percent per annum from October 1, 1990 until judgment, plus interest thereafter at the current legal rate of 3.38 percent per annum until paid, plus the costs of this action in the amount of \$303.65 (\$17.40 fees for service of Summons and Complaint, \$278.25 publication fees, \$8.00 fee for recording Notice of Lis Pendens), plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, **Angela Irene Herrick**, a minor child by and through, **Edna Louise Holcomb**, her mother and best friend, have and recover judgment in the amount owing under a properly perfected judgment lien against the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, **Cindy Bates a/k/a Cindy Bates Barrett, Stacey Abbitt a/k/a Stacey Leigh Abbitt, First Security Mortgage Company, Indiana Lumbermens Mutual Insurance Company** (who disclaimed any interest and Plaintiff dismissed), **Ronald W. Nunneley d/b/a Nunneley Bail Bonds, Thomas H. Galcatcher, Patsy Galcatcher, and County Treasurer and Board of County Commissioners, Rogers County, Oklahoma**, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendant, **James H. Gardner a/k/a James Harvey Gardner**, to satisfy the money judgment of the Plaintiff

herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell according to Plaintiff's election with or without appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

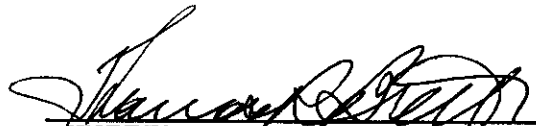
In payment of the judgment rendered herein in favor of the Plaintiff;

Third:

In payment of the judgment rendered herein in favor of the Defendant, Angela Irene Herrick, a minor child by and through, Edna Louise Holcomb, her mother and best friend.

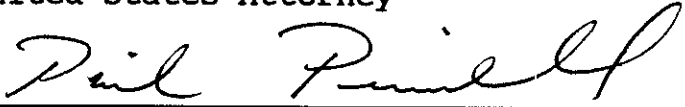
The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.



UNITED STATES DISTRICT JUDGE

APPROVED:


F. L. DUNN, III
United States Attorney



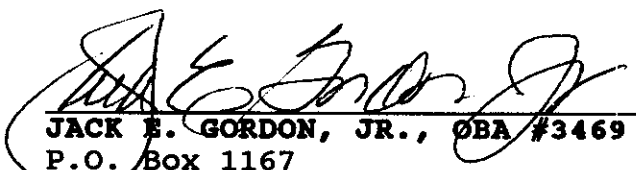
PHIL PINNELL, OBA #7169
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County Treasurer and
Board of County Commissioners,
Rogers County, Oklahoma



JACK E. GORDON, JR., OBA #3469
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Attorney for Defendant,
Angela Irene Herrick,
a minor child by and through,
Edna Louise Holcomb, her mother and best friend

Judgment of Foreclosure
Civil Action No. 92-C-097-B

PP/css

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

WILMER DANIELS,
Plaintiff,

vs.

LOUIS W. SULLIVAN, M.D.
Defendant.

Case No. 91-C-912-C

FILED

NOV 10 1993


Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER

The Court has reviewed the Report and Recommendation of Magistrate Judge Jeffrey Wolfe filed on April 26, 1993 and the objections to the report filed by the government. The Court affirms the Magistrate's recommendation of remand for the purpose of conducting a supplemental hearing. The supplemental hearing is to be limited to the matters specifically addressed by the Magistrate in his report. Such supplemental data shall be considered in conjunction with the previous findings of the Administrative Law Judge (ALJ), and the ALJ is directed to thereafter issue a supplemental decision inclusive of the evidence received.

Thus it is therefore the ORDER OF THE COURT, that this case is remanded with instructions for the ALJ to conduct a supplemental hearing in conformity with this order.

IT IS SO ORDERED this 9th day of November, 1993.


H. DALE COOK
United States District Judge

19

C/ACT

ENTERED ON DOCKET
DATE NOV 12 1993

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

DON W. GLIDEWELL,

Plaintiff,

vs.

CITGO PETROLEUM CORPORATION,

Defendant.

Case No. 91-C-753-C

FILED

NOV 10 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER

The Court has reviewed the itemized inventory of fees prepared by defense counsel at the direction of the Court, totaling \$2,540.25. Defense counsel asserts that such fees are a result of the failure of plaintiff's counsel to comply with the rules and the orders of the Court during the pre-trial stage of these proceedings.

Plaintiff's counsel, Earl Wolfe, has failed to file a response to this itemization of fees. The Court finds that the fees claimed are reasonable. Accordingly, it is the Order of the Court that defendant, Citgo Petroleum, is awarded the sum of \$2,540.25 over and against plaintiff's counsel, Earl Wolfe, for the expenses associated with Mr. Wolfe's failure to comply with the rules and orders of this Court.

IT IS SO ORDERED this 9th day of November, 1993.


H. DALE COOK

United States District Judge

66

ENTERED ON DOCKET

DATE NOV 12 1993

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

NOV -5 93

SCOTT WOLF and BRENDA WOLF

Plaintiff,

vs.

THE PRUDENTIAL INSURANCE COMPANY
OF AMERICA, INC., THE PRUDENTIAL
SERVICE BUREAU INC., THE
PRUDENTIAL LIFE INSURANCE COMPANY
INC., THE PRUDENTIAL INSURANCE
COMPANY OF AMERICA, INC., as Claims
Administrator for the Employee
Benefit Plan known as the Southern
Baptist Health Plan, and THE
ANNUITY BOARD OF THE SOUTHERN
BAPTIST CONVENTION, INC.

Defendants.

RICHARD M. LAWRENCE
CLERK
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OK

Case No. 92-C-1101-B

O R D E R

Now before the Court is the motion for summary judgment of Defendant Annuity Board of the Southern Baptist Convention, Inc. ("Annuity Board") (docket #24) and the motion for summary judgment of Defendants Prudential Insurance Company of America, Inc. and the Prudential Service Bureau, Inc.¹ (collectively, "Prudential") (docket #28).

Undisputed Facts

Scott Wolf, an Associate Pastor of the First Baptist Church of Morris, Oklahoma, and his wife, Brenda, are insured under a medical

¹ With respect to the third Prudential defendant, Prudential states that it is "not aware of any entity known as The Prudential Life Insurance Company, Inc.," but states that, if the claim against it is not dismissed, the motion for summary judgment should be considered to be on behalf of The Prudential Life Insurance Company as well. Because of the disposition of Prudential's motion for summary judgment, it is unnecessary to reach this argument.

28
C/dist @
PT

benefit plan sponsored by the Annuity Board. The medical benefit plan is a church sponsored plan that is not governed by ERISA, pursuant to 29 U.S.C. §§ 1002-1003. Prudential took over the administrative services of the health plan on August 1, 1990. At that time, it was determined that the benefits under the plan would not change, but would be reviewed for possible changes in the future. Prudential did distribute a "Church Comprehensive Medical" plan (Church Plan) at some point after January 1, 1991.² The Church Plan excludes coverage for treatment that is "Educational or Experimental or Investigational" in nature. The plan defines these terms as follows:

"Educational" means that the primary purpose of a service or supply is to provide the patient with any of the following: training in the activities of daily living; instruction in scholastic skills such as reading and writing; preparation for an occupation; or treatment for learning disabilities.

"Experimental or Investigational" means that the medical use of a service or supply is still under study and the service or supply is not recognized throughout the Doctor's profession in the United States as safe and effective for diagnosis or treatment.

This includes, but is not limited to: All phases of clinical trials; all treatment protocols based upon or similar to those used in clinical trials; drugs approved by the Federal Food and Drug Administration under its Treatment Investigational New Drug regulation; and Federal Food and Drug Administration approved drugs used for unrecognized treatment indications.

The plan in effect prior to the Church Plan³ (the Aetna plan)

² The exact date of distribution of the plan booklet is not clear from the record before the court. Plaintiff states she does not recall when she received a copy of the Church Plan (Plaintiffs Response Brief, p. 6) and Prudential does not address the issue.

³ Prudential argues that the plan submitted as Plaintiffs' exhibit # 8 is not the one that was attached to the deposition of Joel Mathis, an Annuity Board employee. This distinction is

excludes coverage for "Charges considered experimental in nature and practices not generally approved by the AMA." It does not contain any definition for charges which are "experimental in nature."

Brenda Wolf was diagnosed with breast cancer in November, 1987. In October, 1990, her breast cancer was found to have metastasized with the discovery of a nodule of cancer in her lung. Of the three choices Plaintiff was given for treatment, she chose high dose chemotherapy with autologous bone marrow transplant (HDC/ABMT)⁴. In this procedure, the patient donates her own bone marrow, which is stored away while she undergoes high dose chemotherapy, and then given back to the patient after the chemotherapy drugs have cleared from the system. On November 20, 1990, Mrs. Wolf entered the hospital to have her bone marrow harvested, and on February 25, 1991, she entered the hospital to undergo high dose chemotherapy. The treatment Mrs. Wolf received was part of a Phase II Clinical Trial conducted by Dr. Strnad. (Deposition of Dr. Charles Strnad, pp. 67-72, 78-80)

The issues before the court are whether Mrs. Wolf's treatment

immaterial because the "Experimental" exclusions in both policies are identical. The Annuity Board argues that the Aetna Plan is "unauthenticated" and should not be considered with these motions. However, neither Defendant alleges that the Aetna Plan was not in effect prior to Prudential's Plan or that it did not contain the language relied on by the Wolfs. Therefore, the Aetna Plan language will be considered with these motions.

⁴ Her other options were continuation of "standard" chemotherapy and tamoxifen (a hormonal therapy). Mrs. Wolf viewed HDC/ABMT as the only real option she had, and Dr. Sexauer believed HDC/ABMT was her only chance for a cure. (Deposition of Dr. John Sexauer, p.24).

was experimental or investigational and whether the terms of the Church Plan or the Aetna plan govern this controversy.

Legal Analysis

Summary judgment pursuant to Fed.R.Civ.P. 56 is appropriate where "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986); Widon Third Oil & Gas v. FDIC, 805 F.2d 342 (10th Cir. 1986). In Celotex, 477 U.S. at 317 (1986), it is stated:

"The plain language of Rule 56 (c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial."

To survive a motion for summary judgment, nonmovant "must establish that there is a genuine issue of material facts..." Nonmovant "must do more than simply show that there is some metaphysical doubt as to the material facts." Matsushita v. Zenith, 475 U.S. 574, 585 (1986).

Prudential's Motion

Prudential argues that, as a claims service provider of a self-funded medical plan, it has no liability either for the Wolfs' claim for payment under the contract, or for the Wolfs' claim for bad faith. The Wolfs argue that they are the third-party beneficiaries to any contract between Prudential and the Annuity Board and that Prudential offers stop-loss insurance which benefits

the Wolfs and obligates Prudential to make payment under the contract and act in good faith. Under Oklahoma law, Plaintiffs' claims must fail. "A third party beneficiary contract exists if the proceeds of an insurance policy are payable to third persons." Roach v. Atlas Life Insurance Co., 769 P.2d 158, 161 (Okla. 1989). Applying this rule to the specific terms of the contract at issue here, Plaintiff is not a third party beneficiary to the contract. The contract specifically provides that proceeds are payable to the annuity board, and that the contract is not assignable. Moreover, the stop-loss or reinsurance contract confers no benefits on the Wolfs. United Food & Commercial Workers & Employers Arizona Health & Welfare Trust v. Paevga, 801 F.2d 1157, 1161-62 (9th Cir. 1986) (a stop-loss policy pays no benefits directly to plan participants and therefore it provides them no insurance). Thus, Prudential does nothing more than provide claims services on a plan of which the Wolfs are a member. Providing claims services does not create a basis for a bad faith claim, Gruenberg v. Aetna Insurance Co., 108 Cal. Rptr. 480, 510 P.2d 1032 (Cal 1973), and further does not create a basis for the contract claim against Prudential. Therefore Prudential's motion for summary judgment (Docket #28) should be and is hereby GRANTED.

The Annuity Board's Motion

The Annuity Board argues that the plain language of the Church Plan excludes coverage for Mrs. Wolf's treatment. The interpretation of a contract, and whether it is ambiguous is a matter of law to be determined by the court. Dodson v. St. Paul

Ins. Co. 812 P.2d 372,376 (Okla. 1991). Contracts are to be construed as a whole, with each clause helping to interpret others. Williams Petroleum Company v. Midland Cooperatives, Inc. 539 F.2d 694, 696 (10th Cir. 1976). The Court cannot change the terms of a contract, but may merely interpret it. Id. The words of a contract are to be given their "plain and ordinary meaning." Mercury Investment Company v. F.W. Woolworth Co. 706 P.2d 523, 529 (Okla. 1985). "[W]here a contract is complete in itself and, as viewed in its entirety, is unambiguous, its language is the only legitimate evidence of what the parties intended." Id. If a contract is ambiguous, it must be construed against the drafter of the contract. Williams Petroleum Co. v. Midland Cooperatives, Inc. 679 F.2d 815, 821 (10th Cir. 1982). But, if the intent of the parties cannot be determined from an examination of the written contract, resort may be had to parol evidence to determine such intent. Public Service Company of Oklahoma v. Home Builders Association of Realtors, Inc., 554 P.2d 1181,1185 (Okla. 1976).

The language of the exclusion for experimental or investigational treatment in the Church Plan is clear and unambiguous. All phases of clinical trials are very clearly included in this exclusion and it is undisputed that Mrs. Wolfe's treatment was part of a Phase II Clinical Trial.

While the Wolfs argue that the language is ambiguous, they merely assert that the language is capable of more than one interpretation, but do not state what the additional interpretation might be. Moreover, the Wolfs rely on evidence other than the

contract language itself to create the ambiguity. Since the language itself is not ambiguous, such evidence cannot be considered. Mercury Investment Company, 706 P.2d at 523. Thus, if the Church Plan governs this dispute, summary judgment would be appropriate.

On the other hand, the language of the previous plan (i.e. the Aetna plan) is not clear and unambiguous, does not use the term "investigational," and provides no definition for the term "experimental in nature." From the language of the contract, it is impossible to discern the intent of the parties as to what is excluded as "experimental in nature." Thus a question of fact exists as to what is "experimental in nature" and whether an autologous bone marrow transplant with high dose chemotherapy would be considered "experimental in nature." Public Service Company of Oklahoma, at 1185.

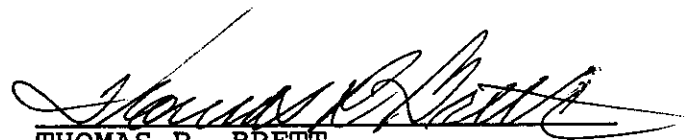
The decisive question, then, is whether a legitimate dispute exists as to which plan is controlling. Plaintiffs present evidence that the distribution of the Church Plan was "delayed" and that a December 14, 1990, memo which was to "serve as your notice of plan changes" did not contain any notice of the "educational or experimental or investigational" exclusion and the attendant definition of "experimental or investigational." Additional evidence demonstrates that the Church Plan continued to be altered as late as May 16, 1991. Further, Joel Mathis, an Annuity Board employee, testified that the "Memo of Understanding" governed the agreement between the Annuity Board and Prudential until July 10,

1993. Under the "Memo of Understanding," the Aetna plan was to govern until the negotiations were complete. The Annuity Board points out that the Church Plan policy booklet states that it is effective January 1, 1991, that Mrs. Wolf may have "perused" the church plan before her bone marrow harvest and that she read it prior to her February 25, 1991, hospital stay.⁵

Under Oklahoma law, an employee's rights under an insurance plan vest at the "time of injury" and cannot be retroactively modified. Oklahoma State and Education Employees Group Insurance Board v. Fullerton, 852 P.2d 813, 814 (Okla. App. 1993). If the modification occurs after liability attaches, a beneficiary may not be deprived of his rights under the policy. Christian v. Metropolitan Life Insurance Co., 566 P.2d 445, 448-449 (Okla. 1977). In the present case, a question of fact exists as to whether the Wolfs had notice of the plan changes at the time of Mrs. Wolf's high dose chemotherapy and whether the changes had been made at that time. There is also a question of fact concerning the intent of the parties as to the effective date of the Church Plan. For these reasons, the Annuity Board's Motion for Summary Judgment (Docket #24) should be and hereby is DENIED.

⁵ The Annuity Board also argues that Mrs. Wolf's deposition testimony and responses to Requests for Admission preclude reliance on any Plan but Prudential's Church Plan. In light of all the evidence before the Court, such statements, at most, go to Mrs. Wolf's credibility and do not provide a basis for summary judgment in this case.

IT IS SO ORDERED THIS 5th DAY OF NOVEMBER, 1993.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET
DATE NOV 12 1993

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

WILMER DANIELS,

Plaintiff,

vs.

LOUIS W. SULLIVAN, M.D.

Defendant.

Case No. 91-C-912-C

FILED

NOV 10 1993


Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER

The Court has reviewed the Report and Recommendation of Magistrate Judge Jeffrey Wolfe filed on April 26, 1993 and the objections to the report filed by the government. The Court affirms the Magistrate's recommendation of remand for the purpose of conducting a supplemental hearing. The supplemental hearing is to be limited to the matters specifically addressed by the Magistrate in his report. Such supplemental data shall be considered in conjunction with the previous findings of the Administrative Law Judge (ALJ), and the ALJ is directed to thereafter issue a supplemental decision inclusive of the evidence received.

Thus it is therefore the ORDER OF THE COURT, that this case is remanded with instructions for the ALJ to conduct a supplemental hearing in conformity with this order.

IT IS SO ORDERED this 9th day of November, 1993.


H. DALE COOK
United States District Judge

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